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2d Session
HOUSE OF REPRESENTATIVES
REPORT
No. 2320

AMENDING THE BANKRUPTCY ACT, APPROVED JULY 1, 1898, AND ACTS AMENDATORY THEREOF AND SUPPLEMENTARY THERETO; AND TO REPEAL SUBDIVISION B OF SECTION 64, SUBDIVISION H OF SECTION 70, AND SECTIONS 118, 354 AND 643 THEREOF AND ALL ACTS AND PARTS OF ACTS INCONSISTENT THEREWITH

JUNE 26, 1952.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. FEIGHAN, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 2234]

The Committee on the Judiciary, to whom was referred the bill (S. 2234) to amend the Bankruptcy Act, approved July 1, 1898, and acts amendatory thereof and supplementary thereto; and to repeal subdivision b of section 64, subdivision h of section 70, and sections 118, 354, and 643 thereof and all acts and parts of acts inconsistent therewith, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

When the Chandler Act of June 22, 1938, was approaching its first decade, a careful survey, in the light of its 10-year history, was made of its structure and operations by the National Bankruptcy Conference, to the end that inaccuracies, ambiguities, and minor imperfections might be corrected and needed or desirable further improvements might be made in the bankruptcy law and its administration. H. R. 5693, introduced in the Eightieth Congress, was the result of such a survey. The bill received the approval of the Committee on the Judiciary (Rept. No. 2083) and was passed by the House of Representatives, but an early adjournment prevented its consideration by the Senate.

A similar bill (H. R. 3111), which contained a number of perfecting changes, was introduced in the Eighty-first Congress. It was again approved by the Committee on the Judiciary (Rept. No. 424) and passed by the House of Representatives. In the Senate, further perfecting changes were submitted to the Senate subcommittee, to which the bill had been referred, and a stand-by clean bill, Confidential Subcommittee Print No. 1, was made up (August 25, 1949). At hearings held by the Senate subcommittee, objections were filed to

several of the proposed amendments and further suggestions were submitted for perfecting and improving the bankruptcy law and its administration. During the course of the hearings all of the objections, except as will be hereinbelow noted, were composed and a number of the suggestions submitted were agreed upon. However, the Senate Subcommittee was unable to make its report to the full Judiciary Committee in sufficient time to permit its consideration by the Senate.

Early in the present session, H. R. 1744 was introduced. That bill incorporated the perfecting changes made in the confidential Subcommittee Print No. 1 of H. R. 3111, Eighty-first Congress. Since its introduction, however, further consideration has been given to the bill by those interested in bankruptcy and bankruptcy administration, particularly at a meeting of the National Bankruptcy Conference. Rather than note the several amendments to H. R. 1744, it seemed to the committee preferable to introduce a "clean" bill, which is H. R. 5064.

S. 2234 was introduced in the Senate as a bill corresponding to H. R. 5064. Before its passage by the Senate several typographical and printer's errors were corrected, but except for the correction of these errors S. 2234 is identical with H. R. 5064.

S. 2234 in addition to adding the recent perfecting changes, incorporates the composed and other perfecting changes made in H. R. 3111. Because of objections, making the proposed amendments controversial, the amendments dealing with admiralty jurisdiction (sec. 2a) and the amendments dealing with the jurisdiction to determine the amount and legality of tax claims (sec. 2a (2½)) are omitted from S. 2234. In composing the objections of the Securities and Exchange Commission, the proposed amendments of sections 221, 222, and the new 239 are omitted and there is submitted a new section 229. The proposed new section 57j (2) has been omitted because it is regarded as no more than declaratory of the decisional law as announced by the Supreme Court in *City of New York* v. *Saper*, 336 U. S. 328.

The National Bankruptcy Conference is a national group organized in 1932, and composed of representatives of national organizations, namely, National Association of Referees in Bankruptcy, American Bar Association, Commercial Law League of America, National Association of Credit Men, the American Bankers Association, and the American Institute of Accountants. It includes, also, otherwise unaffiliated lawyers, law professors, and law text writers, recognized experts in the field of bankruptcy law and procedure. The conference during its entire existence has been active in exploring, developing, and supporting improvements to achieve a better and more efficient operation and administration of the bankruptcy law. Among other things, it was active in connection with the Chandler Act, the revision by the Supreme Court in 1939 of the General Orders and Official Forms in Bankruptcy, in the 1946 Referees' Act putting the referees on a salary basis, and in numerous other proposals which have been made from time to time for bankruptcy amendments.

The present bill represents the unanimous views of the conference on what might be called clarifying and perfecting changes deemed necessary. They have been carefully and painstakingly drafted and perfected, explored and tested against underlying policy and objectives, and all applicable law has been fully researched. The complete and

careful study of the conference, and the progressive perfecting changes and revisions have been made available to and closely reviewed by Subcommittee No. 4 (Bankruptcy and Reorganization).

The bills in prior Congresses, H. R. 5693 and H. R. 3111, had also been studied by the Administrative Office of the United States Courts. The views of the Judicial Conference on those sections of the bill where the Conference has taken action are referred to at the appropriate places in this report. So far as is known, the amendments contained in this bill are uncontroversial in character, excepting in the two respects hereinafter indicated, although there are slight differences as to the extent of the change necessary in section 64a (1) referred to in 26 below.

1. Section 1 (a) of the bill is a new definition of "appellate courts" in section 1 (3) of the act. In the revision of title 28 of the United States Code (Public Law 773, 80th Cong., approved June 25, 1948), the name "court of appeals" was substituted for the former "circuit court of appeals" by section 43. The new name also applies to the Court of Appeals for the District of Columbia, making specific references to that court no longer necessary. The present amendment conforms to these changes.

Sections 9 (a), 9 (b), and 10 make the same conforming change in sections 24a, 24c, and 25a of the act.

2. Section 1 (b) of the bill is a new definition of "circuit" in section 1 (5a) of the act. This change makes the definition consistent with the new terminology of chapter 1, title 28, of the revised United States Code.

3. Section 1 (c) of the bill is a new definition of "conference" in section 1 (7a) of the act. This change makes the definition conform to the terminology of section 331 of the revised title 28.

4. Section 1 (d) of the bill is a new definition of "council" in section 1 (8a) of the act. This change makes the definition conform to the terminology of section 332 of the revised title 28.

5. Section 1 (e) of the bill is a new definition of "courts of bankruptcy" in section 1 (10) of the act. This change makes the definition conform to the new terminology of section 132 of the revised title 28. Under the new terminology, specific reference to the District of Columbia is no longer necessary, and it has, therefore, been deleted.

6. Section 1 (f) of the bill is a new definition of "director" in section 1 (14a) of the act. This change makes the definition conform to the new terminology of section 601 of the revised title 28.

7. Section 1 (g) of the bill is a new definition of "petition" in section 1 (24) of the act. The present definition is not comprehensive, and is awkward. It now means a voluntary or involuntary petition initiating an ordinary bankruptcy proceeding and does not include the "original" petition under the debtor relief chapters. It should mean whichever petition first invoked the benefits of the act, either the ordinary bankruptcy petition or the original petition under a debtor relief chapter. The definition contained in the bill also avoids the cumbersome reference in several sections of the act, to "the petition in bankruptcy or the original petition under" the recited debtor relief chapter. Thus, where as in section 67, the time period is to be computed with reference to the date of the filing of the petition, it is the first petition which invokes the benefits of the act, namely, the ordinary bankruptcy petition or the "original" debtor relief petition, as the case may be.

Sections 18, 21 (a)–(h), and 23 (a) of the bill make the conforming changes in sections 63c, 67a (1) and (2), 67b, 67c, 67d (2) (3) (4) and (5), and 70a, of the act.

This change has been anticipated in the amended section 60a of the act (Public Law 461, 81st Cong., approved March 18, 1950).

8. Section 1 (h) of the bill adds a sentence to the definition of "transfer" in section 1 (30) of the act to clarify it. Notwithstanding the apparently sweeping language of the present definition of transfer, there is a chance that it would be held insufficient to cover the security interest reserved in the grantor by conditional sale, lease, or bailment transaction with the debtor, because such interests are not the results of transfers made by the debtor, although they usually perform the same function as a transfer made by him for the purpose of security. *Bailey* v. *Baker Ice Machine Co.*, 239 U. S. 268 (1915), held that a conditional sale to the debtor could not be a preferential transfer, because it was not made by the debtor. Since the amendment of section 60, it is clear that a preferential transfer may be suffered by the debtor, but the generality of the present definition is clarified by the declaration that such a reserved interest may be a transfer suffered by the debtor.

9. Section 2 (b) of the bill amends section 2a (7) of the act by adding a provision correcting a defect which has developed in section 23a of the act. It has seemed wiser, however, to amend section 2a (7) rather than section 23a, in order to make the change applicable to the entire act including the debtor relief chapters.

The bankruptcy court, where a controversy involves property not in its actual or constructive possession, and adversely held, nevertheless has summary jurisdiction if the respondent consents thereto; and it has generally been held that a respondent consented when he did not object to such jurisdiction, either by preliminary motion or in his answer, and proceeded on the merits. *Moonblatt* v. *Kosmin*, 55 Am. B. R. (N. S.) 267, 139 F. 2d 412 (C. C. A. 3d 1943). However, in 1944, in *Cline* v. *Kaplan*, 323 U. S. 97, the Supreme Court overruled this line of cases and held, in effect, that a respondent is not to be deemed to have consented, if he made formal objection to the summary jurisdiction at any time before entry of the final order in the proceeding, even though the controversy had been proceeded with on its merits without his objecting to jurisdiction. This holding has unsettled sound procedure and an expeditious administration in bankruptcy. A respondent may now proceed on the merits and gamble on a favorable decision. When he perceives or fears that the decision will be against him on the merits, he may interpose his formal objection to jurisdiction at any time before the entry of the order, and, should his objection be sustained, the summary proceeding must be dismissed. In such event, the trustee is required to relitigate the issues in a plenary action.

The proposed amendment is intended to overcome this unsatisfactory situation and is keyed to rule 12 (h) of the Federal Rules of Civil Procedure, which requires the timely interposition of an objection to jurisdiction and, if not so made, the defense is deemed waived.

10. Section 2 (c) of the bill adds a reference to section 77 to the exception to the proviso in section 2a (21) of the act. The bankruptcy court is given power by that subsection to require nonbankruptcy receivers or trustees, assignees for the benefit of creditors, and the like, who become such less than 4 months prior to bankruptcy, to be

superseded by the receivers or trustees under the act. The present act excepts proceedings under chapters X and XII from the 4-month qualification. The same exception is necessary and desirable in connection with proceedings under section 77. In a proceeding under that section, it is essential that receivers and trustees, whether or not appointed within 4 months prior to the initiation of the section 77 proceeding, should be superseded by the trustee in the reorganization proceeding. Omission of reference to section 77 was undoubtedly inadvertent.

11. Section 3 (a) of the bill makes changes in the first, second, and third acts of bankruptcy as contained in section 3a of the act. The first act of bankruptcy deals both with a concealment or removal of property, by the debtor or with his permission, and with a transfer by him of property to a third person, in each case with intent to hinder, delay, or defraud creditors. Sections 67d and 70e deal with the avoidance of fraudulent transfers to third persons, but thereunder the "intent to hinder, delay, or defraud creditors" is not always coextensive with the like requirement for the purposes of the act of bankruptcy. Thus, a transfer fraudulent and voidable under section 67d or 70e may not constitute an act of bankruptcy under section 3a (1).

The proposed amendment is fashioned to effect a correlation between section 3a (1) and sections 67 and 70, so that, where a transfer is fraudulent and voidable under the latter, it will constitute an act of bankruptcy under the former.

The second act of bankruptcy has also been correlated to other provisions of the act. "Intent" is not an element of a preferential transfer as defined in section 60a. Nor should it be a requirement for the purposes of the act of bankruptcy under section 3a (2). While the cases have used the objective standard in finding intent, it being presumed where the other elements of a preference exist, nevertheless, the requirement is confusing and troublesome and should be deleted. See 1 Collier on Bankruptcy, 14th ed., 432, 436.

The third act of bankruptcy deals with an unvacated or undischarged lien obtained "through legal proceedings." A distraint under a landlord's warrant is not a "legal proceeding." 1 Collier, *op. cit.* 451. Since it is the unvacated or undischarged lien which should, in such circumstances, give rise to the act of bankruptcy, a distraint should be included.

12. Section 3 (b) of the bill makes clarifying changes in section 3b of the act. The first change is with respect to the 4-month period as it applies to the third act of bankruptcy. Under section 3a (3), an insolvent debtor commits an act of bankruptcy if he suffers or permits a creditor to obtain a lien through legal proceedings upon any of his property and does not vacate or discharge it within 30 days thereafter or at least 5 days before the date set for the sale or other disposition of such property, and, under section 3b, a petition may be filed against a person within 4 months after he has committed an act of bankruptcy. As the above provisions read, the third act of bankruptcy arises—i. e., is committed—upon the expiration of 30 days after the unvacated or undischarged lien was obtained, when the 4-month period starts to run under section 3b. The effect of such a construction is to extend the period for filing the petition to 5 months after the lien is obtained. Equally, under the 5-day clause, the date fixed for a sale or other

disposition of the affected property might extend beyond the 4-month period after the lien was obtained. 1 Collier, *op. cit.* 458.

However, section 67a (1) voids a lien by judicial proceedings against property of an insolvent debtor obtained within 4 months before his bankruptcy. Thus, for the purposes of avoidance, the 4-month period starts from the date the lien was obtained.

Clearly the foregoing provisions are not coordinated in their timing. As indicated, a petition my be filed upon the third act of bankruptcy more than 4 months after the judicial lien was obtained, and thus after it could be voided under section 67a (1). The majority of the courts have conformed the effective scope of sections 3a (3) and 3b to the objective of section 67a (1) by holding, despite the clear language of section 3b, that the 4-month period starts after the date the lien was obtained, and not after the date the act of bankruptcy was committed. 1 Collier, *op. cit.* 458.

It is desirable to resolve the confusion in the cases by starting the 4-month period, for the purposes of the third act of bankruptcy, from the date the lien was obtained. This is accomplished by the first amendment to section 3b.

The other amendments to section 3b are: (1) substituting "where such intent is an element of such act" for "where required to be proved," a mere clarifying change; (2) conformance of the element of time of the second act of bankruptcy to that of the recently amended section 60a; and (3) conformance of the element of intent to the proposed changes in section 3a (1) and (2).

13. Section 4 of the bill amends section 7a (8) of the act by permitting the list of creditors to contain either their residences or their places of business, instead of only the residences, as now required. Normally, it is the place of business of the creditor, rather than his residence, that should be stated. In actual practice, the places of business are usually inserted in the schedules, even though the official schedules refer to residence, because only that information is available to the bankrupt from the statements and invoices. The desirability, if not the necessity for the change, is indicated by the recent decision in *In Re Realmuto*, New York City Court, special term, part 1, New York County, 117 N. Y. L. J. 1618 (April 25, 1947), which held that a notice mailed to the place of business was not compliance with the requirements.

14. Section 5 of the bill, in addition to a change referred to in 15, infra, correlates the intent of section 11a of the act with that of section 14c (5). Under the latter section, the granting of a discharge or its equivalent (the confirmation of an arrangement or wage earner's plan by way of composition) within the 6-year period constitutes a ground of objection to a discharge in a subsequent bankruptcy proceeding. Neither the waiver nor denial of a discharge in the prior bankruptcy proceeding is ground for such objection. In the parallel section 11a, however, which provides for a stay of suits and by proviso requires a stay to be vacated where, within the 6-year period, the debtor has been granted a discharge, or had an arrangement or wage earner's plan by way of composition confirmed, the proviso also requires vacation of the stay if the debtor has been adjudicated a bankrupt. Since the granting of a discharge or its equivalent, and not the waiver or denial of a discharge, is the bar to a discharge in the subsequent bankruptcy proceeding, the fact that the debtor "has been adjudicated a bankrupt" within the prior 6-year period is

immaterial and should not affect the bankrupt's right to a stay of suits with respect to the new debts dealt with in the subsequent proceeding. The proviso, therefore, has been corrected by deleting "or has been adjudicated a bankrupt or."

15. Section 6 (a) of the bill amends section 14c (5) of the act to make the 6-year period within which objection can be made to a discharge in a subsequent bankruptcy proceeding run from the date of the commencement of the prior proceeding rather than from the date of discharge or its equivalent. It seems more reasonable that the date from which the 6 years shall run should be the date when the prior proceedings began, because the rights of the former creditors then became fixed, the former discharge affected the debts which then existed, and the time for beginning a second proceeding in which a new discharge can be had should not be deferred by any delay of the court in granting the discharge in the former proceeding. Section 5 of the bill makes the necessary conforming change in section 11a of the act.

16. Section 6 (b) of the bill makes a clarifying change in section 14e of the act. The present language, "the hearing upon his application for a discharge," actually refers to the "hearing upon the objection to his application for a discharge." The bill so states, in order to avoid confusion.

17. Sections 7, 8, and 13 of the bill conform the act to the Rules of Civil Procedure for the United States District Courts, which abrogated the equity procedure and rules referred to in sections 18a, 21k, and 42a of the act. With regard to section 42a, the Rules of Civil Procedure are not wholly appropriate to referees' records, however. For example, literally construed, rule 79 (b) would require the referee to enter in the civil-order book the allowance of every claim filed and every order made in the varied steps of a bankruptcy proceeding. In the circumstances, it is more feasible to have the Supreme Court prescribe the manner in which the records of the referees shall be kept; and the bill, in section 13, so provides.

18. Section 11 of the bill adds two subdivisions to the present section 32. That section deals with the transfer of cases, but, as presently written, it covers only the case of two petitions against the same person or partnership. The first subdivision proposed to be added incorporates the substance of the general statute on venue of district courts stated in Title 28, section 1406, United States Code, modified only to accommodate it to the Bankruptcy Act. Under this first subdivision, the judge may upon timely and sufficient objection transfer a case brought in the wrong court of bankruptcy. This first subdivision also incorporates the amendment to section 1406 which changed "shall" to "may, in the interest of justice." Ordinarily, no doubt the venue rules in bankruptcy will serve the interest of justice, but in the event that in the special case they do not, the judge will have discretion to retain the proceeding.

The second subdivision proposed to be added makes available to the bankruptcy judge a power to transfer a case, in the interest of the parties, similar to that now accorded the judge in a nonbankruptcy proceeding by section 1404 (a) of title 28. This power could already be exercised by a judge in a chapter X proceeding, because of the authority granted by section 118. A clause is also added to section 2a (1) of the act by section 2 (a) of the bill to authorize the court to exercise jurisdiction in a case so transferred to it.

When the power is made generally available in all bankruptcy proceedings, the special provision in section 118 is no longer necessary, and it is therefore repealed by section 24 of the bill.

19. Section 12 of the bill clarifies section 39a (9) of the act, relating to duties by the referee. The duties prescribed in this clause were added by the Chandler Act to supplement and parallel the enlarged jurisdiction of referees over adjudications, discharges and debtor relief proceedings and thereby make certain that the dockets of the clerks would reflect an adequate recital of the important steps as they occur in the proceedings before the referee. However, the provision of the present clause requiring the filing of "reports of the completion thereof," presumably intended to refer to arrangements and wage-earner plans, is not clear in its statement of reference. Nor is it necessary for the purposes of the clerk's docket; upon the completion of a proceeding, the referee normally makes up a report, which becomes a part of the record of the proceeding, and a separate report to be transmitted to the clerk is surplusage. Perhaps for that reason this requirement has not been generally observed; and, for the further reasons above indicated, it is desirable to delete it. The other changes are simply to clear the clause of some of its confusing language. For example, there is no differentiation intended between "all orders made by them" and "all orders made and entered by them," nor between "arrangements or plans" and "arrangements or wage-earner plans." The changes made by the bill clarify the provision.

20. Section 14 (a) of the bill is intended to clarify section 57j of the act. The change is to make clear that the limitation on interest "up to the date of bankruptcy" relates only to interest on the "pecuniary loss."

21. Section 14 (b) of the bill removes a useless and confusing exception from section 57n of the act. By section 57n the general 6-month period within which claims must be filed is extended 6 months in the case of infants and insane persons without guardians, without notice of the bankruptcy proceedings, but the present act excepts proceedings under chapters X, XI, XII, and XIII. The exception is deleted by the bill because it is useless and may be confusing. Section 57n is generally inapplicable in proceedings under the chapters enumerated, and where it is applicable there is as much reason for the provision for infants and insane persons as there is in ordinary bankruptcy.

22. Section 15 of the bill corrects an inadvertent omission in section 58a (8) of the act. That section is applicable, by reason of section 302, to proceedings under chapter XI. Section 337 (2) of chapter XI provides for the deposit of moneys necessary to pay the administration costs and expenses incurred by a committee of creditors, and its agents or attorneys, in such amount as the court may allow; but clause (8) of section 58a makes no reference to "committees." Therefore, such reference has been included therein.

23. Section 16 of the bill makes a slight typographical change in section 59b of the act. The use in this section of the word "fixed" before "as to liability" has developed some confusion, particularly when read with section 63a (1), which also speaks of a "fixed liability." It is not intended by "fixed as to liability" in section 59b to restrict it to the claims provable under section 63a (1). Therefore, to avoid this confusion and for the sake of clarity, the amendment changes "fixed" to "not contingent." The same change, for the same reason,

is made in sections 224 (4), 367 (3), and 473 (3) by sections 25, 36, and 44 of the bill.

24. Section 16a of the bill corrects two outmoded cross-references in section 61 of the act. The first reference, to the Revenue Act of 1926 authorizing the judges to accept the deposit of certain securities in lieu of sureties, should now be solely to the United States Code. The second reference, to section 12B of the Federal Reserve Act, requires reference also to the code, since section 12B of the Federal Reserve Act was withdrawn from the Federal Reserve Act and made a separate act by section 1 of the act of September 21, 1950.

25. Section 17 of the bill corrects an erroneous cross-reference in section 62d of the act. Subdivision c of section 62 is the subdivision which prohibits "splitting" compensation, and the cross-reference in subdivision d is corrected accordingly.

26. Section 19 of the bill makes three changes in section 64a (1) of the act. (A) As the act now reads, reimbursement of filing fees out of the estate is restricted to the filing fees paid by creditors in involuntary cases. Thus, it has been held that in voluntary cases the filing fees advanced for the bankrupt are not reimbursable out of the estate but merely become his personal obligations provable against the estate *In re Goldenberg*, 22 Am. B. R. 404 (D. C. Pa.); *In re Rosenstein*, 22 Am. B. R. (N. S.) 606 (D. C. Pa.); *In re Layman Whitney Assoc., Inc.*, 28 Am. B. R. (N. S.) 431 (D. C. N. Y.). The bill remedies this inequitable differentiation by permitting filing fees advanced by others for the bankrupt to be reimbursed out of the estate. Obviously, where the filing fee is paid by the bankrupt out of his own assets, there need be no reimbursement. (B) The act, as it now is written, leaves in doubt the compensability of services by an attorney in connection with investigating and reporting crimes of a bankrupt. Section 21a provides for a comprehensive examination into the "acts, conduct, or property" of a bankrupt and section 3057 of title 18, United States Code, requires a referee, receiver, or trustee to report to the Federal district attorney the facts and circumstances discovered, the names of witnesses, and the offenses under the act believed to have been committed. Normally, the receiver or trustee conducts the examination by his officially approved attorney, who would also prepare the report. Except as may otherwise be expressly provided in the act, the test of compensability of services is usually "benefit" to the estate. While there are no reported cases on the question whether such services are compensable out of the estate, and while section 3057 may be authority enough, doubt exists as to whether they are so compensable and, more particularly, to what extent. Congress by section 3057 of title 18, which was derived from the former section 29e (1) of the act, enacted in 1926 and later revised and clarified in the Chandler Act, has indicated a policy with regard to ferreting out and reporting offenses punishable under the act. It would seem equally desirable to extend such policy to offenses punishable under other laws, Federal or State, such, for example, as using the mails to defraud, the fraudulent disposition of property made a crime under local law, and the like. The bill removes the doubt above indicated and broadens the base of the compensable services. (C) The final proviso added to this clause changes the rule that, where bankruptcy follows a debtor-relief proceeding and the fund for distribution is not sufficient to pay the administration costs and expenses of both proceedings, the costs and

expenses of both proceedings shall share pro rata and on a parity. *In re Columbia Ribbon Company*, 45 Am. B. R. (N. S.) 528 (C. C. A. 3d); *United States* v. *Killoren*, 45 Am. B. R. (N. S.) 808 (C. C. A. 8th). Unless provision is made for payment, ahead of all prior incurred and unpaid administration costs and expenses, of the costs and expenses necessary to administer and close the estate in the ensuing bankruptcy proceeding, there is always danger of a breakdown of administration. There should be assurance to the trustee in the ensuing bankruptcy proceeding that the costs and expenses incurred by him, such as bond premiums, insurance premiums, costs of conducting a public sale, and compensation for his services and for the services of his attorney out of the assets turned over to and administered by him, will be paid ahead of the prior unpaid costs and expenses. Unless thus assured, he cannot be expected to function effectively.

The Judicial Conference has also approved the modification of the present rules (Report of Judicial Conference, October 1946, p. 15) although it would permit priority to the subsequent proceeding to be decided in each case by the court. The necessities of bankruptcy administration appear to make a statutory priority preferable.

27. Section 20 of the bill is designed to make more effective the policy of effectuating equal distribution between foreign and domestic creditors which is now embodied in section 65d. As presently written, a creditor who has participated in a foreign bankruptcy proceeding is not precluded from sharing equally in the distribution by the court of bankruptcy in the United States when he has "received" a dividend from the foreign court. In many cases dividends are declared in foreign courts, but are not paid until after the distribution in the United States. Equity will be better served if dividends "paid or declared" in the foreign court are taken into account. The language of the section has also been clarified to make sure that the rule is applied to the same "class" of creditors, classified as in the Bankruptcy Act.

28. Sections 19 (b) and 23 (g) of the bill repeal section 64b and the coordinated section 70h of the act, and sections 40, 46, and 54 of the bill add new sections 381, 486, and 669 in chapters XI to XIII, respectively, of the act. These changes are occasioned by a new approach and treatment of the subject matter of sections 64b and 70h.

Section 64b of the Chandler Act deals with the relative priorities of debts contracted while a discharge or confirmation of an arrangement is in force and those contracted prior thereto, in the event the discharge is revoked or the confirmation is set aside. Section 70h deals with the vesting of title to property of the bankrupt upon the setting aside of an arrangement or wage-earner plan or revoking the discharge.

Section 64b is a recast of section 64c of the prior act, which provided that upon the setting aside of the confirmation of a composition or the revocation of a discharge the creditors, who during the force of the composition or discharge sold property to the bankrupt on credit and in good faith, were to be paid in full ahead of the old creditors. The Chandler amendment was intended to clarify these provisions and to broaden the base by giving all debts contracted while the discharge was in force or after the confirmation of an arrangement, full priority over all of the old debts provable as of the date of bankruptcy. However, it has since developed that the Chandler amendment has not adequately accomplished its contem-

plated objectives. For a discussion of the inadequacies see 3 Collier on Bankruptcy, 14th edition, 2185 et seq. and 1946 Supp. 178 et seq., and cases therein cited.

After an extended exploration, a different approach and treatment were developed for dealing with such new debts. In the case of a revoked discharge, section 64b accords priority only to the debts contracted by the bankrupt while the discharge was in force, and the debts contracted by him after his bankruptcy and before the granting of such discharge are given no consideration. However, in both situations, the debts are incurred by the bankrupt after his bankruptcy and there is no sound basis for the differentiation. There is further the practical difficulty of carrying out the scheme of the provision. As is generally the situation where a bankrupt's discharge has been revoked, his estate has already been fully liquidated and a distribution by way of dividends made to his old creditors. This may explain why a careful research discloses no case in which the provision was invoked where a discharge had been revoked, which itself is a rare occurrence. Therefore, it is believed that the sounder, more effective, and more realistic solution is the elimination of the priority for debts contracted by a bankrupt while his discharge was in force, remitting the new and old creditors to their remedies under applicable local law.

With regard to debts incurred by a debtor after confirmation of an arrangement or plan, where there is a default in its consummation and a liquidation ensues upon the entry of an order directing that bankruptcy be proceeded with, a different treatment is provided by the new sections. The reasonable expectancies of the new and prior creditors, in reliance upon a confirmed arrangement or plan, are contemplated and resolved. The new creditors, who look to the property of the debtor for their debts, must recognize that such property is also available for the prior unsecured debts, scaled or otherwise, as provided by the confirmed arrangement or plan; while the prior creditors must expect that new credit will be extended to and new debts incurred by the debtor. Therefore, where there is a default in the consummation of a confirmed arrangement or plan and a liquidation ensues, it is fair and equitable to provide that the new provable unsecured debts and the prior provable unsecured debts, scaled or otherwise, as provided by the arrangement or plan, and less any payments made thereon thereunder, shall share on a parity in the distribution in the ensuing bankruptcy. Thus, the new sections (1) deal with the rights, duties, and liabilities of the creditors holding unsecured debts incurred by the debtor after confirmation of the arrangement or plan and prior to the date of the entry of the order directing bankruptcy and (2) establish the basis for sharing in the ensuing bankruptcy proceeding between such new debts and the prior provable unsecured debts. With respect to the debts incurred by a receiver or trustee, or by a debtor in possession, as the case may be, during the proceeding and before the debtor takes over the property upon confirmation of the arrangement or plan, such debts are already adequately dealt with under the respective chapters as administration costs and thus require here no special or further treatment.

Inasmuch as in the ensuing bankruptcy proceeding the priority provisions of section 64a of the act become operative, it is provided,

in order to maintain the same level of equitable distribution, that the new debts shall share on a parity with the prior debts "of the same classes," i. e., share on a parity in their respective orders of priority.

Also, so that the rights, duties, and liabilities of the creditors holding the new debts shall be subject, as in the case of the prior debts, to the straight bankruptcy provisions of the act, it is provided that the provisions of chapters I to VII of the act shall, to the extent applicable and not inconsistent or in conflict with the provisions of the section, be applicable to such rights, duties, and liabilities and, for the purposes of such application, the date of entry of the order directing bankruptcy shall be regarded as the date of bankruptcy. Thus, the time provisions of sections 60 and 67 would relate to such date of bankruptcy, and, inter alia, the following sections of the act would be operative in dealing with the rights, duties, and liabilities of the new creditors: Section 44 (election of trustees and creditors' committees), section 56 (voters at meetings of creditors), section 57 (proof and allowance of claims except, subdivision n, time limitation for filing claims), section 60 (avoidance of preferences), section 63 (debts which may be proved), section 67 (avoidance of judgment liens and fraudulent transfers) section 68 (set-offs and counterclaims), and section 70 c and e (transfers voidable under applicable local law).

In a chapter X proceeding, the problem is quite different. It is the consummation of the plan, not its confirmation, which corresponds to the confirmation of the chapter XI proceeding. Under chapter X, when the plan is consummated (by distribution of the new securities), the chapter X reorganization is unconditional both as between the reorganized company and the old creditors who receive new securities in the reorganization and also in respect to those who extend credit to the reorganized company. There is, therefore, no need in chapter X to protect those who extend credit on the faith of the consummated plan. The new section 239 (see "37," *infra*) specifies when a plan shall be regarded substantially consummated.

An amendment to the present act to clarify and broaden section 64b had also been considered and approved by the Judicial Conference in September 1947. (See Report of Judicial Conference, September 1947, pp. 14–15.) The above added new sections, in the opinion of the Administrative Office of the United States Courts, satisfactorily accomplish the objectives considered by the Judicial Conference.

The Treasury Department has objected to the new sections, not upon any ground that they would be ineffective or do not fairly and equitably deal with the rights and interests of the new and old creditors, but rather that they may have an effect upon the revenue laws and collection of revenue. However, section 337 (2) of chapter XI requires the deposit of "the money necessary to pay all debts which have priority," including, of course, taxes and debts owing to the Government; section 455 of chapter XII provides that no arrangement shall be confirmed unless provision is made for payment of tax claims, except upon the acceptance of a lesser amount by the Secretary of the Treasury; and section 659 (6) of chapter XIII requires the payment of debts entitled to priority in the order of priority as provided in section 64a. These provisions sufficiently protect and secure the Government in the collection of its taxes. Besides, by the repeal of section 64b, the position of the Government with regard to revenue would be bettered. Under section 64b, as now operative, the new

debts take ahead of the old debts (including tax claims). However, under the new sections, the Government would share on its old tax debts on a parity, and in the undisturbed order of priority (sec. 64a), with the new debts.

29. Section 21 (d) of the bill makes several changes in section 67c of the act. Apart from the conformation to the revised definition of petition referred to in 7, supra, the principal change is designed more fully to implement the policy of the Chandler Act, and to clarify one point which may otherwise be the cause of troublesome litigation. The Chandler Act introduced section 67c as a new subdivision. In limiting statutory liens on personal property not accompanied by possession of such property, it met the situation presented by a growing tendency to express priorities in terms of liens and thus to defeat the scheme of priorities prescribed in section 64a of the Bankruptcy Act. A lien upon real estate is commonly dealt with adequately by recording acts and there is no confusion caused by fluctuation of the subject matter to which it relates. Liens on personal property unaccompanied by possession, however, are of the nature of "floating liens", which attach to all a debtor's personalty, although the property he owns is commonly changing from day to day. If any provisions for priority were relabeled a "lien," such a lien would be indistinguishable from floating liens on personal property.

There is accordingly reason to restrict such liens to the same extent that priorities are restricted. The Chandler Act also adopted the view that a landlord should not be encouraged to accumulate liens of indefinite extent and thus contribute to building up unsound financial positions on the part of tenants to the disadvantage of general creditors. Section 67c accordingly postponed such liens to administrative expenses and to wages, which to the extent of $600 earned within 3 months of bankruptcy were for the first time given by section 64a priority second only to expenses of administration and outranking all other priority claims, including taxes, which were assigned the fourth degree of priority.

Wages having thus been given prescribed priority under section 64a, section 67c then proceeded to restrict the recognition of liens for wages on personal property unaccompanied by possession to the same extent that their priority was restricted. Landlords' liens were likewise restricted. It was thought, however, unnecessary to restrict wage or rent claims for the benefit of junior lien holders. Consequently, the Chandler Act prescribed that such liens should be restricted "except as against other liens." This last clause was applied in the case of *In re Eakin Lumber Co.*, 39 F. Supp. 787 (N. D. W. Va. 1941). There a wage lien was held to be unrestricted because of a junior lien in favor of the Reconstruction Finance Corporation. If the policy of limiting such liens comparably to priorities be sound, this policy is inadequately implemented by section 67c so construed. As between the wage claimants and general creditors, the intervention of the lien of the Reconstruction Finance Corporation was purely a fortuitous circumstance which should not be decisive. In such situation it would be advantageous for the trustee to make a deal with the junior lien holder to extinguish the lien at a discount, in order to prevail over the holder of the restrictable senior lien. There may be a question whether such a deal would be a desirable way to promote the policy of the act.

In some states of fact it would also be difficult to avoid a construction of the statute which would introduce a self-created circuity of lien. Since junior liens are senior to the rights of general creditors, the subdivision would seem to provide that the trustee in bankruptcy could prevail over the specific lien claimant with reference to the restrictable excess, but the junior lien claimant, outranking the trustee as the representative of general creditors with reference to this property, could thus claim it, only to lose it back to the specific lien claimant, whose lien is unrestricted as against other liens. This kind of situation has troubled the courts where an unrecorded transfer is good as against a senior encumbrancer with actual notice who records, but invalid against a junior encumbrancer without such notice. The junior encumbrancer then outranks the holder of the unrecorded interest who in turn outranks the senior encumbrancer who by reason of his recording outranks the junior encumbrancer, and so on around the circle. There is no simple and clear-cut solution for such legal tangles, which are sometimes unavoidable. It is desirable, however, to avoid them where possible.

When an interest is invalidated or restricted as against the trustee, it is sometimes advantageous to provide in the alternative that it may be preserved for the benefit of the estate instead of invalidated. This method is used in section 67a (formerly sec. 67f) with reference to liens by legal proceedings obtained during insolvency and within 4 months of bankruptcy. The proposed amendment to section 67c employs this established technique by providing that the restrictable excess of the lien may be preserved for the benefit of the estate. The trustee can thus clearly claim the restrictable excess to the exclusion of the junior lien holders. This result would enable the trustee to prevail upon the facts of the Eakin case, where he was completely excluded. It also avoids any possible difficulty about circuity of lien.

30. Section 21 (f) of the bill restates section 67d (3). This provision now denounces as fraudulent any transfer made with intent to use the consideration to effect a voidable preference. It was written into the act in 1938 as a restatement of the rule of *Dean* v. *Davis*, 242 U. S. 438, 38 Am. B. R. 664, 37 S. Ct. 130, 61 L. Ed. 419 (1917). See Oglebay, Some Landmark Cases in the Development of the Bankruptcy Act of 1898 (1948), 22 J. of Nat'l Ass'n of Ref. 105, 108. This case represented an extreme situation where the debtor, fearing arrest because of forged notes which had been given to a bank, persuaded his brother-in-law (who knew the debtor to be hopelessly insolvent) to take up the notes in return for the debtor's promise to mortgage all his property to secure the advance. The Supreme Court stressed the fact that this was not a good-faith, commercial transaction to enable the debtor to continue business, but was a device to enable the debtor to make a preferential payment in contemplation of bankruptcy (Oglebay, *op. cit. supra*). As it now stands, however, section 67d (3) literally embraces not only the *Dean* v. *Davis* situation, but any case where the debtor is insolvent, borrows money and gives security, with the intent to use the proceeds to pay off some unsecured creditors. 4 Collier on Bankruptcy, 14th ed., par. 67.38. This goes beyond *Dean* v. *Davis* and is undesirable inasmuch as the debtor is making a bona fide effort to carry on business. To the extent that such a transaction creates a preference, section 60 of the act affords creditors adequate protection without invoking the special effects of section 67d (3).

Moore and Tone, Proposed Bankruptcy Amendments: Improvements or Retrogression? (1948), 57 Yale L. J. 683, 714. Yet in another respect section 67d (3) appears to impose a limitation on the *Dean* v. *Davis* doctrine which does not seem to have found expression in any of the cases applying the doctrine. 4 Collier, *op. cit. supra.* It is required that there be an intent to use the consideration to effect a preference voidable under section 60, which means that the referee must have had reasonable cause to believe the debtor insolvent. Note (1939), 87 U. Pa. L. Rev. 317, 327. In a case where the debtor mortgages his property in contemplation of bankruptcy with intent to use the proceeds to make payments which enable one of his creditors to obtain a greater percentage of his debt than some other creditor of the same class, it should be immaterial whether the transfer is voidable under section 60. If anything, the estate needs greater protection in a case where the preference is not voidable, since the need for pursuing the auxiliary transaction is more acute where the preferred creditor is invulnerable. 4 Collier, *op. cit. supra;* Moore and Tone, *op. cit. supra.* As revised, section 67d (3) meets these objections and represents a more accurate statutory embodiment of *Dean* v. *Davis.*

31. Section 21, in addition to the changes already referred to in 7, *supra,* provides in subsection (h) a further change in section 67d (5), defining when a fraudulent transfer can become perfected. Obviously, a fraudulent transfer can never "become perfected" against creditors and, therefore, as to them, the period of limitation of 1 year or 4 months, as the case may be, would never begin to run. This, of course, is not intended. The bill, by deleting the reference to creditors, makes the perfection as against a hypothetical bona fide purchaser the only proper test.

32. Section 21 (i) of the bill adds a proviso to section 67d (6) which permits the use of the same technique already referred to in 29, *supra,* in connection with 67c—the preservation, by order of the court, of an interest invalidated against the trustee, if the preservation will be for the benefit of the estate. The same method is used in section 67a.

33. Section 22 conforms the scope of section 69d of the act to that of section 2 (21). Section 2 (21) gives the court jurisdiction to require receivers or trustees, appointed in proceedings not under the act, as well as assignees for the benefit of creditors and agents authorized to take possession of or to liquidate a person's property, to deliver the property in their possession or under their control to a receiver or trustee appointed under the act. Section 69d, spelling out that power, requires a receiver or trustee, not appointed under the act, of any property of the bankrupt, to account to the bankruptcy court, but does not include the assignee and agent. The bill adds the necessary language and clarification.

34. Section 23 amends section 70a to make clear that a trustee in bankruptcy is vested with the title of the bankrupt in property which is located without, as well as within, the United States. See Nadelman, The National Bankruptcy Act and the Conflict of Laws, 59 Harvard Law Review 1025 (1946). The words "wherever located" have therefore been added at appropriate places. In addition, for ease of reference, the several sentences of section 70a (1) have been made into separate paragraphs.

35. Section 23 (e) of the bill makes a clarifying change in section 70c of the act. Section 70c was amended in the last Congress (Public Law 461, 81st Cong., act of March 18, 1950), simplifying the subdivision and conforming it to the amended section 60a. However, it is now recognized that the amendment did not accurately express what was intended. Since the trustee already has title to all of the bankrupt's property, it is not proper to say that he has the rights of a lien creditor upon his own property. What should be said is that he has the rights of a lien creditor upon property in which the bankrupt has an interest or as to which the bankrupt may be the ostensible owner. Accordingly, the language of section 70c has been revised so as to clarify its meaning and state more accurately what is intended.

36. Section 23 (f) provides for the supplying of an omission in section 70e (2). Where under the act a transfer by way of lien, security title or otherwise, or an obligation, is void or voidable against a trustee in bankruptcy, it may under certain circumstances be necessary to preserve the same for the benefit of the estate by subrogating the trustee to the rights of the transferee or obligee, so that the benefits intended for the estate would not be passed on to junior interests not entitled thereto.

Under section 60b, the lien or security title, voidable as a preference, may be preserved for the benefit of the estate and passed to the trustee, and, under section 67a (3), a lien obtained by judicial proceedings, which is voidable, may likewise be preserved for the benefit of the estate and, to evidence title thereto, a conveyance thereof to the trustee may be directed. A like situation may arise under section 70e with respect to a transfer or obligation which is void or voidable against the trustee, but the subdivision contains no provision of preservation for the benefit of the estate similar to that contained in section 60b or section 67a (3). The bill provides language which supplies the omission and which is adapted to the situation.

37. Section 24 of the bill adds a new section 229. This section will clarify the present uncertainty as to the point in the reorganization proceeding at which rights vest under the plan sufficiently to make it equitable to cut off further right to amend or modify the plan as to matters materially and adversely affecting the rights of creditors or stockholders.

Clarification of the law on the foregoing matter is needed. A plan of reorganization in a chapter X proceeding is normally involved and complex and after confirmation usually requires a prolonged period of time, through a series of stages, for its consummation. It is generally difficult to determine in a particular case when the transfer of the property has occurred to such an extent as to vest rights which may subsequently not be taken away.

In the Equitable Building reorganization, three conflicting views were taken as to the time when rights vest under a plan in a chapter X reorganization: It was argued by different parties that such rights vest (1) upon entry of the order of confirmation, (2) when the plan has been substantially consummated, or (3) upon entry of the final decree under section 228. Each of these views creates practical difficulties: (1) if the date of the confirmation be taken, difficulties are encountered in determining the exact status of the debtor and its estate, and the rights of creditors extending credit, during the period which must elapse after the date of confirmation and before the date

of the final decree; (2) if the time of substantial consummation of the plan is held to be determinative, uncertainty now exists as to the exact time when substantial consummation has occurred; and (3) if the date of the final decree is taken [as the Circuit Court of Appeals for the Second Circuit apparently did in the Equitable case (*Knight* v. *Wertheim & Co.*, 158 F. 2d 838)], creditors extending credit after confirmation, and old creditors and stockholders receiving interests under the plan, will be unable to determine their rights until entry of the final decree, which in many cases occurs more than 1 year after confirmation. These uncertainties make it difficult to get credit, make contracts, and receive such commitments (which may include the underwriting of securities under the plan) as may be necessary to consummate the plan.

The second sentence of section 222, as now construed, permits a material and adverse alteration or modification of the plan to be made up to the time of entry of the final decree under section 228, and even thereafter if the judge has reserved in the final decree jurisdiction so to do and also if the case is reopened. For discussion and cases cited, see 6 Collier on Bankruptcy, 14th ed., 3902. While the judge has discretion to permit or to deny in a particular case a change in the plan [see *Kelby* v. *Prudence-Bonds Corp.*, 55 Am. B. R. (N. S.) 165; 140 F. 2d 185 (C. C. A. 2d 1944), where the change was proposed a long time after confirmation of the plan], nevertheless, every plan after confirmation and before final decree, and even after the final decree, continues under the cloud of possible change. This is obviously undesirable where new interests and rights are to be set up or created. It seems preferable to establish an absolute bar time and, further, to advance the time for material and adverse alterations or modifications of a plan, to a time unrelated to the final decree. Such a provision would also give stability to a reorganized debtor or other entity provided for by the plan, upon becoming transferee of the property (sec. 226). New securities may thereafter be issued and new credit extended with confidence that, after such fixed time, there can be no material and adverse change in the confirmed plan.

The new section 229 adopts the test of substantial consummation of the plan for determining the final vesting of rights thereunder, and provides certain concrete tests for determining when there has been substantial consummation of the plan. It also permits the court to enter an order fixing the precise date as of which the acts constituting substanital performance were completed. It prohibits, after such date, alterations or modifications of the plan if they materially and adversely affect the participation in the plan of any class of creditors or stockholders.

The National Bankruptcy Conference, in cooperation with the Securities and Exchange Commission, developed this new section which replaces the amendments to sections 221, 222, and new 239 of prior H. R. 3111 (81st Cong.).

38. Sections 27, 34, 42, and 49 of the bill make an identical change in sections 238 (3), 355, 459, and 644 of the act to permit claims to be filed within 6 rather than 3 months when bankruptcy ensues upon the failure of a plan. In chapter X, for example, under section 224 (4) (b), fixed, liquidated, and undisputed claims, either listed or scheduled, need not be filed in order to participate in distribution under a plan. Therefore, quite frequently such claims are not filed;

However, where a bankruptcy ensues upon failure of a plan, provable claims, not previously filed, must be filed and proved in accordance with the requirements of section 57, except that the time for filing is 3 months instead of 6 months as specified in section 57n. Thus, where no first meeting had been previously set—which presupposes a prior suspended bankruptcy proceeding reinstated upon the failure of the reorganization proceeding—the period for filing claims, not previously filed, is 3 months after the first date set for the first meeting of creditors in the reinstated bankruptcy proceeding.

Practitioners not intimately familiar with the act, and more especially creditors filing for themselves, become confused in regard to to the required time. Instead of filing within the 3-month period, they rely on the 6-month period of section 57n and thus often file their claims too late. To overcome this confusion, the amendment conforms the required period for filing by making it 6 months in both situations. The same possibility of confusion in the other chapters has been similarly eliminated. Moreover, the confusing dichotomy between sections 354 and 355, and between sections 643 and 644, has been eliminated, and the entire matter dealt with in sections 355 and 644. Sections 354 and 643 are therefore unnecessary, and have been repealed by sections 33 and 48 of the bill. This also has the effect of eliminating what appears to be an unnecessary limitation now imposed by sections 354 and 643. Where the time for filing claims in a superseded bankruptcy proceeding had expired before the filing of the petition under the chapter, it is now provided in section 354 that claims provable under section 63 of the act and not filed within the time prescribed by section 57n, shall not be allowed in the proceedings or participate in the arrangement under the chapter. Under section 367 (3) (b), such scheduled claims, whether or not filed, are nevertheless entitled to participate in the distribution under the arrangement. There is no sound reason for barring the claims of creditors, scheduled in the superseded bankruptcy proceeding, merely because they failed to file their claims thereunder within 6 months. In this connection, it may be noted that in the case of an original proceeding under chapter XI, there is no 6-month period of limitations, and claims may be filed at any time until the entry of the order of confirmation (sec. 367 (3) (a)). The same situation had existed under section 643.

Conforming changes are made by sections 37, 38, 51, and 52 of the bill in sections 309, 371, 660, and 661 of the act.

A reference to claims for taxes has also been added, since they are not "provable under section 63," but should of course be given parallel treatment.

39. Section 28 makes a correcting change in section 265a (11). The "order" referred to in paragraph (11) does not direct a "liquidation of the estate" but either directs reinstatement of a suspended bankruptcy proceeding or an adjudication in bankruptcy or dismissal of the proceeding in the case of an original petition. The bill makes the paragraph accurate.

40. Sections 29, 41, and 47 of the bill make similar changes in sections 324, 424, and 624 of the act. Section 324, for example, requires the debtor to file with his petition a statement of his executory contracts and, if not previously filed, his schedules and statement of affairs. Unlike section 7a (8), which in a straight bankruptcy proceeding permits, on cause shown, an extension of time for the filing of

schedules, section 324 of chapter XI, and the like provisions of chapter XII (sec. 424) and chapter XIII (sec. 624), grant no such power. However, many courts, despite the clear language of the provision, are granting extensions for filing the statements and schedules. This practice is not only irregular, but it is not uniform, and the extended time is frequently granted as of course.

The proposed amendments of sections 324, 424, and 624, are intended to legitimize this practice and to make it uniform. It is assumed, of course, that the courts will strictly enforce the requirement of "cause shown" and will not grant extensions as of course.

Sections 39, 45 and 53 of the bill make conforming changes in sections 376, 481 and 666 of the act, declaring the consequences of failure to duly file the schedules, statements of executory contracts and statements of affairs.

41. Section 30 of the bill adds a new section 328 at the end of article IV of chapter XI of the act. In *Securities and Exchange Commission* v. *U. S. Realty & Improvement Co.*, 310 U. S. 434, 42 Am. B. R. (N. S.) 602, 60 S. Ct. 1044; 84 L. Ed. 1293 (1940), where a petition was filed under chapter XI by a debtor corporation having hundreds of creditors and thousands of stockholders, it was decided that the court had the duty to dismiss the petition, leaving the corporate debtor to seek relief under chapter X. In that case, the petition under chapter XI was dismissed after the proceeding had been running for many months and a proceeding had to be started anew under chapter X.

Under section 147 of chapter X, a petition improperly filed thereunder, because adequate relief can be obtained by the debtor under chapter XI, may be transferred to chapter XI and thereafter for the purposes of chapter XI, be deemed to have been originally filed thereunder. There is no corresponding provision in chapter XI for a transfer of a chapter XI proceeding, if improperly filed thereunder, to chapter X. The proposed amendment supplies this lack. It codifies the law of the United States Realty & Improvement case, and adopts the procedure of section 147 for transferring the proceeding to chapter X.

42. Sections 31 and 32 of the bill are designed to improve the operation of a creditors' committee under chapter XI of the act. Section 338 provides for the appointment, at the first meeting of creditors, of a committee and section 337 (2) provides that, upon acceptance of the arrangement, the debtor shall deposit—

> * * * the money necessary to pay * * * the actual and necessary expenses incurred in connection with the proceedings and the arrangement by the committee of creditors and the attorneys or agents of such committee, in such amount as the court may allow.

It has been held that the "committee of creditors" means the official committee appointed under section 338; that the only expenses allowable are those incurred by such committee, its attorneys or agents after the appointment, and are further restricted to the expenses incurred by them in passing judgment upon the plan and making such judgment known to the debtor and creditors; and that the expenses incurred by any other committee, its attorneys or agents, are not allowable. *Lane* v. *Haytian Corporation of America*, 44 Am. B. R. (N. S.) 425, 117 F. 2d 216 (C. C. A. 2d 1941).

The provisions have not worked out satisfactorily. The appointment of the official committee at the first meeting of creditors, at

which are also received and determined the acceptances by creditors of the arrangement (sec. 336 (4)), gives such official committee little opportunity, if any, to function for the benefit of creditors in passing judgment on the arrangement unless the proceeding, which had been fashioned to be streamlined, is delayed and slowed up in order to enable the committee to make its investigations and examinations, and to secure any desired improvement or other modification in the terms of the offer for the benefit of creditors. Obviously, the provisions are badly timed in their coordination and are not realistic.

Moreover, negotiations for a settlement between a debtor and his creditors are generally started before chapter XI is resorted to, in the hope that an out-of-court arrangement can be effected. When this attempt fails, usually because of a recalcitrant minority, chapter XI is resorted to in order to bind a nonaccepting minority. But before the arrangement petition is filed, much, if not all, of the spade work may have been done, such as investigations, book examinations, solving of legal problems and the negotiations which developed or will substantially contribute toward the development of the arrangement, and the unofficial committee, its attorneys and agents usually continue to render services after the petition is filed and until the first meeting of creditors at which the official committee may be appointed. But under section 337 (2), as construed by the Haytian case, the expenses of the unofficial committee, its attorneys and agents are not allowable, even though their services may have benefited the administration of the estate, the arrangement proceeding, and the creditors. In such situations, the burden of the expense is either borne by the creditors who selected the unofficial committee, with a free ride to the other creditors, or the expenses are not reimbursed. In either event, the result is unfair, and it may be expected that occasionally it is circumvented by a secret deal between the debtor and the unofficial committee.

The proposed amendments are designed to remedy the defects above indicated. Section 338 is amended by eliminating the official committee for the purposes of a chapter XI proceeding, where the unofficial committee has not been designated, and section 337 (2) is amended to permit allowance of the actual and necessary expenses of an unofficial committee, its attorneys and agents, whether incurred before the arrangement proceeding is initiated or thereafter. The necessary limitations are still retained: Such committee must have been selected by not less than a majority in amount of the unsecured creditors (exclusive of the disqualified creditors enumerated in sec. 44) and, in fixing allowances, only the services which contributed to a confirmed arrangement or, carrying through the objective of section 64a (3), to the refusal of the confirmation of an arrangement, or which were beneficial in the administration of the estate, are to be considered by the court. The first qualification avoids rump committees and permits of only a single committee which must represent no less than the majority interests; the second qualification limits the type of services, and the proper costs and expenses incidental thereto, which the court may consider in fixing the amount of the allowance. It is believed that the changes proposed will strengthen the procedure, expedite the proceeding, and be in the general interest of all parties concerned.

43. Sections 35, 43, and 50 of the bill make similar changes in sections 366, 472, and 656a of the act. These sections presently require a finding that a proposed plan under chapters XI, XII, and XIII shall be "fair and equitable." In fact, however, the fair and equitable rule, as interpreted in *Northern Pacific Railway Co.* v. *Boyd*, 228 U. S. 482. 33 S. Ct. 554, 57 L. Ed. 931 (1913), and *Case* v. *Los Angeles Lumber Products Co., Ltd.*, 308 U. S. 106, 41 Am. B. R. (N. S.) 110, 60 S. Ct. 1, 84 L. Ed. 110 (1939), cannot realistically be applied in a chapter XI, XII, or XIII proceeding. Were it so applied, no individual debtor and, under chapter XI, no corporate debtor where the stock ownership is substantially identical with management could effectuate an arrangement except by payment of the claims of all creditors in full.

Chapter XI has replaced the old composition procedure under former section 12 of the Bankruptcy Act, where the fair and equitable rule did not apply. Nor is it practicable or realistic to apply the rule in a proceeding under chapter XI, XII, or XIII.

The proposed amendment is designed to remove the fair and equitable provision, and by the paragraph added to each of the amended sections it is made clear that the rule of the Boyd and Los Angeles cases shall not be operative under those three chapters. The Treasury Department objects to the added paragraph on the ground that it may impair the requirement for the deposit of the moneys necessary to pay priority claims (including taxes). However, it seems clear that compliance with the provisions of section 337 (2) of chapter XI, section 455 of chapter XII and section 659 (6) of chapter XIII is a condition precedent to confirmation of the arrangement or plan under the respective chapters. Therefore, the Government here also is sufficiently protected and secured in the collection of its taxes. See "28," *supra*.

44. Sections 55, 56, and 57 contain the usual separability provisions, provision for application to pending cases, and provision for an effective date.

CHANGES IN EXISTING LAW

In compliance with clause 2a of rule XIII of the House of Representatives, there are shown below the changes made by the bill in the several sections of the Bankruptcy Act approved July 1, 1898, and the amendments and supplements thereto (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SEC. 1 (3) "Appellate courts" shall include the *United States* [circuit] courts of appeals [of the United States, the United States Court of Appeals of the District of Columbia,] and the Supreme Court of the United States;

SEC. 1 (5a) "Circuit" shall mean ["] judicial circuit["] [and shall include the District of Columbia, and "senior circuit judge" shall include the Chief Justice of the United States Court of Appeals for the District of Columbia];

SEC. 1 (7a) "Conference" shall mean the *Judicial* [conference] *Conference* of *the United States* [senior circuit judges provided for by section 2 of the Act of September 14, 1922 (42 Stat. 838)];

SEC. 1 (8a) "Council" shall mean the [judicial council] *Judicial Council* of the circuit [provided for by section 306 of the United States Judicial Code];

SEC. 1 (10) "Courts of bankruptcy" shall include the *United States* district courts [of the United States] and *the district courts* of the Territories and possessions to which this Act is or may hereafter be applicable [, and the District Court of the United States for the District of Columbia];

SEC. 1 (14a) "Director" shall mean the Director of the Administrative Office of the United States Courts [appointed pursuant to chapter XV of the United States Judicial Code];

SEC. 1 (24) "Petition" shall mean a document filed in a court of bankruptcy or with a clerk thereof [by a debtor praying for the benefits of this Act, or by creditors alleging the commission of an act of bankruptcy by a debtor therein named] *initiating a proceeding under this Act;*

SEC. 1 (30) "Transfer" shall include the sale and every other and different mode, direct or indirect, of disposing of or of parting with property or with an interest therein or with the possession thereof or of fixing a lien upon property or upon an interest therein, absolutely or conditionally, voluntarily, or involuntarily, by or without judicial proceedings, as a conveyance, sale, assignment, payment, pledge, mortgage, lien, encumbrance, gift, security, or otherwise; *the retention of a security title to property delivered to a debtor shall be deemed a transfer suffered by such debtor;*

SEC. 2a (1) Adjudge persons bankrupt who have had their principal place of business, resided or had their domicile within their respective territorial jurisdictions for the preceding six months, or for a longer portion of the preceding six months than in any other jurisdiction, or who do not have their principal place of business, reside, or have their domicile within the United States, but have property within their jurisdictions, or who have been adjudged bankrupts by courts of competent jurisdiction without the United States, and have property within their jurisdictions [;] , *or in any cases transferred to them pursuant to this Act.*

SEC. 2a (7) Cause the estates of bankrupts to be collected, reduced to money, and distributed, and determine controversies in relation thereto, except as herein otherwise provided, and determine and liquidate all inchoate or vested interests of the bankrupt's spouse in the property of any estate [,] whenever, under the applicable laws of the State, creditors are empowered to compel such spouse to accept a money satisfaction for such interest; *and where in a controversy arising in a proceeding under this Act an adverse party does not interpose objection to the summary jurisdiction of the court of bankruptcy, by answer or motion filed before the expiration of the time prescribed by law or rule of court or fixed or extended by order of court for the filing of an answer to the petition, motion or other pleading to which he is adverse, he shall be deemed to have consented to such jurisdiction;*

SEC. 2a (21). Require receivers or trustees appointed in proceedings not under this Act, assignees for the benefit of creditors, and agents authorized to take possession of or to liquidate a person's property to deliver the property in their possession or under their control to the receiver or trustee appointed under this Act or, where an arrangement or a plan under this Act has been confirmed and such property has not prior thereto been delivered to a receiver or trustee appointed under this Act, to deliver such property to the debtor or other person entitled to such property according to the provisions of the arrangement or plan, and in all such cases to account to the court for the disposition by them of the property of such bankrupt or debtor: *Provided, however,* That such delivery and accounting shall not be required, except in proceedings under *section 77 and* chapters X and XII of this Act, if the receiver or trustee was appointed, the assignment was made, or the agent was authorized more than four months prior to the date of bankruptcy. Upon such accounting, the court shall reexamine and determine the propriety and reasonableness of all disbursements made out of such property by such receiver, trustee, assignee, or agent, either to himself or to others, for services and expenses under such receivership, trusteeship, assignment, or agency, and shall, unless such disbursements have been approved, upon notice to creditors and other parties in interest, by a court of competent jurisdiction prior to the proceeding under this Act, surcharge such receiver, trustee, assignee, or agent the amount of any disbursement determined by the court to have been improper or excessive.

SEC. 3a. Acts of bankruptcy by a person shall consist of his having (1) [conveyed, transferred,] concealed, removed, or permitted to be concealed or removed any part of his property, with intent to hinder, delay, or defraud his creditors or any of them, *or made or suffered a transfer of any of his property, fraudulent under the provisions of section 67 or 70 of this Act;* or (2) [transferred, while insolvent, any portion of his property to one or more of his creditors with intent to prefer such creditors over his other creditors] *made or suffered a preferential transfer, as defined in subdivision a of section 60 of this Act*; or (3) suffered or permitted, while insolvent, any creditor to obtain a lien upon any of his property through legal proceedings *or distraint* and not having vacated or discharged such lien within thirty days from the date thereof or at least five days before the date set for any sale or other disposition of such property; or (4) made a general assignment for the benefit of his creditors; or (5) while insolvent or unable to pay his debts as they

mature, procured, permitted, or suffered voluntarily or involuntarily the appointment of a receiver or trustee to take charge of his property; or (6) admitted in writing his inability to pay his debts and his willingness to be adjudged a bankrupt.

SEC. 3b. A petition may be filed against a person within four months after the commission of an act of bankruptcy. Such time with respect to the *third act of bankruptcy shall expire four months after the date the lien through legal proceedings or distraint was obtained and, with respect to the* first [, second,] or fourth act of bankruptcy, *such time* shall not expire until four months after the date when the transfer or assignment became so far perfected that no bona-fide purchaser from the debtor [and no creditor] could thereafter have acquired any rights in the property so transferred or assigned superior to the rights of the transferee or assignee therein [.] , *and such time with respect to the second act of bankruptcy shall not expire until four months after the date when the transfer became perfected as prescribed in subdivision a of section 60 of this Act.* For the purposes of this section, it is sufficient if intent to *hinder, delay or defraud* under the first act of bankruptcy, *where such intent is an element of such act,* or if [intent or] insolvency under the second act of bankruptcy, exists either at the time when the transfer was made or at the time when it became perfected, as hereinabove provided.

SEC. 7a (8) prepare, make oath to, and file in court within five days after adjudication, if an involuntary bankrupt, and with his petition, if a voluntary bankrupt, a schedule of his property, showing the amount and kind of property, the location thereof and its money value, in detail; and a list of all his creditors, including all persons asserting contingent, unliquidated, or disputed claims, showing their residences *or places of business,* if known, or if unknown that fact to be stated, the amount due to or claimed by each of them, the consideration thereof, the security held by them, if any, and what claims, if any, are contingent, unliquidated, or disputed; and a claim for such exemptions as he may be entitled to; all in triplicate, one copy for the clerk, one for the referee, and one for the trustee: *Provided, however,* That the court may for cause shown grant further time for the filing of such schedules if, with his petition in a voluntary proceeding or with his application to have such time extended in an involuntary proceeding the bankrupt files a list of all such creditors and their addresses;

SEC. 11a. A suit which is founded upon a claim from which a discharge would be a release, and which is pending against a person at the time of the filing of a petition by or against him, shall be stayed until an adjudication or the dismissal of the petition; if such person is adjudged a bankrupt, such action may be further stayed until the question of his discharge is determined by the court after a hearing, or by the bankrupt's filing a waiver of, or having lost, his right to a discharge, or in the case of a corporation, by its failure to file an application for a discharge within the time prescribed under this Act: *Provided, however,* That such stay shall be vacated by the court if, *in a proceeding under this Act commenced* within six years prior to the date of the filing of the petition in bankruptcy, such person [has been adjudicated a bankrupt, or] has been granted a discharge, or has had a composition confirmed, or has had an arrangement by way of composition confirmed, or has had a wage-earner's plan by way of composition confirmed.

SEC. 14c (5) [has] *in a proceeding under this Act commenced* within six years prior to *the date of the filing of a petition in* bankruptcy *had* been granted a discharge, or had a composition or an arrangement by way of composition or a wage-earner's plan by way of composition confirmed under this Act;

SEC. 14e. If the bankrupt fails to appear at the hearing upon *the objections* to his application for a discharge, or having appeared refuses to submit himself to examination, or if the court finds after hearing upon notice that the bankrupt has failed without sufficient excuse to appear and submit himself to examination at the first meeting of creditors or at any meeting specially called for his examination, he shall be deemed to have waived his right to a discharge, and the court shall enter an order to that effect.

SEC. 18a. Upon the filing of a petition for involuntary bankruptcy, service thereof, with a writ of subpena, shall be made upon the person therein named as defendant. Upon the filing of a voluntary petition in behalf of a partnership by less than all of the general partners, service thereof, with a writ of subpena, shall be made upon the general partner or partners not parties to the filing of such petition. Such service shall be returnable within ten days, unless the court shall, for cause shown, fix a longer time, and shall be made at least five days prior to the return day, and in other respects shall be made in the same manner that service of such process is had upon the commencement of a [suit in equity] *civil action* in the courts of the United States; but in case personal service cannot be made within the time allowed, then notice shall be given by publication in the

same manner as provided by law for notice by publication in suits to enforce a legal or equitable lien in courts of the United States, except that, unless the court shall otherwise direct, the order shall be published only once and the return day shall be five days after such publication.

SEC. 21k. In all proceedings under this Act, the parties in interest shall be entitled to all rights and remedies granted by the [rules of equity practice] *Rules of Civil Procedure for the United States District Courts* established from time to time by the Supreme Court pertaining to discovery, interrogatories, inspection and production of documents, and to the admission of execution and genuineness of instruments: *Provided however*, That the limitations of time therein prescribed may be shortened by the court to expedite hearings.

SEC. 24a. The [Circuit Courts of Appeals of the United States and the United States Court of Appeals for the District of Columbia] *United States courts of appeals*, in vacation, in chambers, and during their respective terms, as now or as they may be hereafter held, are hereby invested with appellate jurisdiction from the several courts of bankruptcy in their respective jurisdictions in proceedings in bankruptcy, either interlocutory or final, and in controversies arising in proceedings in bankruptcy, to review, affirm, revise, or reverse, both in matters of law and in matters of fact: *Provided, however*, That the jurisdiction upon appeal from a judgment on a verdict rendered by a jury [,] shall extend to matters of law only: *And provided further*, That when any order, decree, or judgment involves less than $500, an appeal therefrom may be taken only upon allowance of the appellate court.

SEC. 24c. The Supreme Court of the United States is hereby vested with jurisdiction to review judgments, decrees, and orders of the [Circuit Courts of Appeals of the United States and the United States Circuit Court of Appeals for the District of Columbia] *United States courts of appeals* in proceedings under this Act in accordance with the provisions of the laws of the United States now in force or such as may hereafter be enacted.

SEC. 25a. Appeals under this Act to the [Circuit Courts of Appeals of the United States and the United States Circuit Court of Appeals for the District of Columbia] *United States courts of appeals* shall be taken within thirty days after written notice to the aggrieved party of the entry of the judgment, order or decree complained of, proof of which notice shall be filed within five days after service or, if such notice be not served and filed, then within forty days from such entry.

SEC. 32b. Where venue in any case filed under this Act is laid in the wrong court of bankruptcy, the judge may, in the interest of justice, upon timely and sufficient objection to venue being made, transfer the case to any other court of bankruptcy in which it could have been brought.

c. The judge may transfer any case under this Act to a court of bankruptcy in any other district, regardless of the location of the principal assets of the bankrupt, or his principal place of business, or his residence, if the interests of the parties will be best served by such transfer.

SEC. 39a. (9) transmit forthwith to the clerks all bonds filed with and approved by them, the originals of all orders made by them granting adjudications or dismissing the petitions as provided in this Act, and certified copies of all orders made [and entered] by them, granting, denying, or revoking discharges, *or adjudging that bankrupts have waived their rights to a discharge,* [or] confirming or refusing to confirm, [arrangements or plans] or setting aside the confirmation of, arrangements or wage-earner plans, and reinstating the proceedings or cases [and reports of the completion thereof];

SEC. 42a. The records of all proceedings in each case before a referee shall be kept [as nearly as may be] in the [same] manner [as records are kept in equity cases in district courts of the United States] *as prescribed by the Supreme Court.*

SEC. 57j (*1*) Debts owing to the United States or *to* any State or *any* subdivision thereof as a penalty or forfeiture shall not be allowed, except for the amount of the pecuniary loss sustained by the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby and such interest as may have accrued [thereon] *on the amount of such loss* according to law.

SEC. 57n. Except as otherwise provided in this Act, all claims provable under this Act, including all claims of the United States and of any State or *any* subdivision thereof, shall be proved and filed in the manner provided in this section. Claims which are not filed within six months after the first date set for the first meeting of creditors shall not be allowed: *Provided, however*, That the court may, upon application before the expiration of such period and for cause shown, grant a reasonable fixed extension of time for the filing of claims by the United States

or any State or *any* subdivision thereof: *Provided further*, That [, except in proceedings under chapters X, XI, XII, and XIII of this Act,] the right of infants and insane persons without guardians, without notice of the bankruptcy proceedings, may continue six months longer: *And provided further*, That a claim arising in favor of a person by reason of the recovery by the trustee from such person of money or property, or the avoidance by the trustee of a lien held by such person, may be filed within thirty days from the date of such recovery or avoidance, but if the recovery is by way of a proceeding in which a final judgment has been entered against such person, the claim shall not be allowed if the money is not paid or the property is not delivered to the trustee within thirty days from the date of the rendering of such final judgment, or within such further time as the court may allow. When in any case all claims which have been duly allowed have been paid in full, claims not filed within the time hereinabove prescribed may nevertheless be filed within such time as the court may fix or for cause shown extend and, if duly proved, shall be allowed against any surplus remaining in such case.

SEC. 58a. (8) all applications by receivers, ancillary receivers, marshals, trustees, *committees*, and attorneys for compensation from the estate for services rendered, specifying the amount and by whom made: *Provided, however*, That where a creditors' committee has been appointed pursuant to this Act, the notice required by clauses (1), (4) and (6) of this subdivision shall be sent only to such committee and to the creditors who have filed with the court a demand that all notices under this subdivision be mailed to them.

SEC. 59b. Three or more creditors who have provable claims [fixed] *liquidated as to amount and not contingent* as to liability [and liquidated as to amount] against any person which amount in the aggregate in excess of the value of securities held by them, if any, to $500 or over; or, if all of the creditors of such person are less than twelve in number, then one *or more* of such creditors whose claim or claims [equals] *equal* such amount, may file a petition to have him adjudged a bankrupt.

SEC. 61. The judges of the several courts of bankruptcy shall designate, by order, banking institutions as depositories for the money of estates under this Act, as convenient as may be to the residences of receivers and trustees, and shall require from each such banking institution a good and sufficient bond with surety, to secure and prompt repayment of the deposit. Said judges may, in accordance with the provisions of, and the authority conferred in [section 1126 of the Revenue Act of 1926, as amended (U. S. C. Title 6, sec. 15)] *title 6, United States Code, section 15*, accept the deposit of the securities therein designated, in lieu of a surety or sureties upon such bond and may, from time to time as occasion may require, by like order increase or decrease the number of depositories or the amount of any bond or other security or change such depositories: *Provided*, That no security in the form of a bond or otherwise shall be required in the case of such part of the deposits as are insured under [section 12B of the Federal Reserve Act, as amended] *title 12, United States Code, section 1821: And provided further*, That depository banks shall place such securities, accepted for deposit in lieu of a surety or sureties upon depository bonds, in the custody of Federal Reserve banks or branches thereof designated by the judges of the several courts of bankruptcy, subject to the orders of such judges. All national banking associations designated as depositories, pursuant to the provisions of this section of this Act, are authorized to give such security as may be required. All pledges of securities heretofore made for the purposes herein named are hereby ratified, validated and approved.

SEC. 62d. A custodian, receiver, or trustee or the attorney for any of them, or any other attorney, seeking compensation for services rendered by him in a proceeding under this Act or in connection with such proceeding, shall file with the court his petition setting forth the value and extent of services rendered, the amount requested and what allowances, if any, have theretofore been made to him. Such petition shall be accompanied by his affidavit stating whether an agreement or understanding exists between the petitioner and any other person for a division of compensation and, if so, the nature and particulars thereof. If satisfied that the petitioner has, in any form or guise, shared or agreed to share his compensation or in the compensation of any other person contrary to the provisions of [this] subdivision *c of this section*, the court shall withhold all compensation from such petitioner.

SEC. 63c. Notwithstanding any State law to the contrary, the rejection of an executory contract or unexpired lease, as provided in this Act, shall constitute a breach of such contract or lease as of the date of the filing of the petition [in

bankruptcy, or of the original petition] *initiating a proceeding* under [chapter X, XI, XII, or XIII of] this Act.

SEC. 64a (1) the actual and necessary costs and expenses of preserving the estate subsequent to filing the petition; the fees for the referees' salary fund and for the referees' expense fund; the filing fees paid by creditors in involuntary cases *or by persons other than the bankrupt in voluntary cases;* where property of the bankrupt, transferred or concealed by him either before or after the filing of the petition, shall have been recovered for the benefit of the estate of the bankrupt by the efforts and at the cost and expense of one or more creditors, the reasonable costs and expenses of such recovery; the costs and expenses of administration, including the trustee's expenses in opposing the bankrupt's discharge *or in connection with the criminal prosecution of an offense punishable under chapter 9 of title 18 of the United States Code, or an offense concerning the business or property of the bankrupt punishable under other laws, Federal or State;* the fees and mileage payable to witnesses as now or hereafter provided by the laws of the United States, and one reasonable attorney's fee, for the professional services actually rendered, irrespective of the number of attorneys employed, to the petitioning creditors in involuntary cases and to the bankrupt in voluntary and involuntary cases, as the court may allow: *Provided, however, That where an order is entered in a proceeding under any chapter of this Act directing that bankruptcy be proceeded with, the costs and expenses of administration incurred in the ensuing bankruptcy proceeding shall have priority in advance of payment of the unpaid costs and expenses of administration; including the allowances provided for in such chapter, incurred in the superseded proceeding and in the suspended bankruptcy proceeding, if any;*

[SEC. 64b. Debts contracted while a discharge is in force or after the confirmation of an arrangement shall, in the event of a revocation of the discharge or setting aside of the confirmation, have priority and be paid in full in advance of the payment of the debts which were provable in the bankruptcy or arrangement proceeding, as the case may be.]

SEC. 65d. Whenever a person shall have been adjudged a bankrupt by a court without the United States and also by a court of bankruptcy, [creditors residing within the United States shall first be paid a dividend equal to that received in the court without the United States by other creditors before creditors who have received a dividend in such courts shall be paid any amounts] *all creditors with claims allowed by the court of bankruptcy who have not had a dividend paid or declared in their favor by the court without the United States shall first be paid a dividend equal to that paid or declared in such foreign court in favor of other creditors of the same class under this Act, before creditors* who have had a *dividend paid or declared in their favor by such foreign court shall be paid any amount in the court of bankruptcy.*

SEC. 67a. (1) Every lien against the property of a person obtained by attachment, judgment, levy, or other legal or equitable process or proceedings within four months before the filing of a petition [in bankruptcy or of an original petition] *initiating a proceeding* under [chapter X, XI, XII, or XIII of] this Act by or against such person shall be deemed null and void (a) if at the time when such lien was obtained such person was insolvent or (b) if such lien was sought and permitted in fraud of the provisions of this Act: *Provided, however,* That if such person is not finally adjudged a bankrupt in any proceeding under this Act and if no arrangement or plan is proposed and confirmed, such lien shall be deemed reinstated with the same effect as if it had not been nullified and voided.

(2) If any lien deemed null and void under the provisions of paragraph (1) of this subdivision a, has been dissolved by the furnishing of a bond or other obligation, the surety on which has been indemnified directly or indirectly by the transfer of or the creation of a lien upon any of the nonexempt property of a person before the filing of a petition [in bankruptcy or of an original petition] *initiating a proceeding* under [chapter X, XI, XII, or XIII of] this Act by or against him, such indemnifying transfer or lien shall also be deemed null and void: *Provided, however,* That if such person is not finally adjudged a bankrupt in any proceeding under this Act, and if no arrangement or plan is proposed and confirmed, such transfer or lien shall be deemed reinstated with the same effect as if it had not been nullified and voided.

b. The provisions of section 60 of this Act to the contrary notwithstanding, statutory liens in favor of employees, contractors, mechanics, landlords, or other classes of persons, and statutory liens for taxes and debts owing to the United States or *to* any State or *any* subdivision thereof, created or recognized by the laws of the United States or of any State, may be valid against the trustee, even

though arising or perfected while the debtor is insolvent and within four months prior to the filing of the petition [in bankruptcy or of the original petition] *initiating a proceeding* under [chapter X, XI, XII, or XIII of] this Act, by or against him. Where, by such laws such liens are required to be perfected and arise but are not perfected before bankruptcy, they may nevertheless be valid, if perfected within the time permitted by and in accordance with the requirements of such laws, except that if such laws require the liens to be perfected by the seizure of property, they shall instead be perfected by filing notice thereof with the court.

c. Where not enforced by sale before the filing of a petition [in bankruptcy, or of an original petition] *initiating a proceeding* under [chapter X, XI, XII, or XIII of] this Act, *and except where the estate of the bankrupt is solvent: (1)* though valid *against the trustee* under subdivision b of this section, statutory liens, including liens for taxes or debts owing to the United States or to any State or *any* subdivision thereof, on personal property not accompanied by possession of such property, and liens, whether statutory or not, of distress for rent shall be postponed in payment to the debts specified in clauses (1) and (2) of subdivision a of section 64 of this Act and [, except as against other liens,] such liens for wages or for rent shall be restricted in the amount of their payment to the same extent as provided for wages and rent respectively in subdivision a of section 64 of this Act; *and (2) the provisions of subdivision b of this section to the contrary notwithstanding, statutory liens created or recognized by the laws of any State for debts owing to any person, including any State or any subdivision thereof, on personal property not accompanied by possession of, or by levy upon or by sequestration or distraint of, such property, shall not be valid against the trustee: Provided, however, That so much of clause (1) of this subdivision c as restricts liens for wages and rent and clause (2) of this subdivision c shall not apply in proceedings under chapter X of this Act, unless an order shall be entered therein directing that bankruptcy be proceeded with, or in proceedings under section 77 of this Act. The court may on due notice order so much of any lien in excess of the restricted amount under clause (1) and any lien invalid under clause (2) of this subdivision c to be preserved for the benefit of the estate and, in any such event, such lien for the excess and such invalid lien, as the case may be, shall pass to the trustee.*

d. (2) Every transfer made and every obligation incurred by a debtor within one year prior to the filing of a petition [in bankruptcy or of an original petition] *initiating a proceeding* under [chapter X, XI, XII, or XIII of] this Act by or against him is fraudulent (a) as to creditors existing at the time of such transfer or obligation, if made or incurred without fair consideration by a debtor who is or will be thereby rendered insolvent, without regard to his actual intent; or (b) as to then existing creditors and as to other persons who become creditors during the continuance of a business or transaction, if made or incurred without fair consideration by a debtor who is engaged or is about to engage in such business or transaction, for which the property remaining in his hands is an unreasonably small capital, without regard to his actual intent; or (c) as to then existing and future creditors, if made or incurred without fair consideration by a debtor who intends to incur or believes that he will incur debts beyond his ability to pay as they mature; or (d) as to then existing and future creditors, if made or incurred with actual intent as distinguished from intent presumed in law, to hinder, delay, or defraud either existing or future creditors.

(3) Every transfer made and every obligation incurred by a debtor *who is is or will thereby be rendered insolvent*, within four months prior to the filing of a petition [in bankruptcy or of an original petition] *initiating a proceeding* under [chapter X, XI, XII, or XIII of] this Act by or against him is fraudulent, as to then existing and future creditors: (*a*) if made or incurred *in contemplation of the filing of a petition initiating a proceeding under this Act by or against the debtor or in contemplation of liquidation of all or the greater portion of the debtor's property*, with intent to use the consideration obtained for [the] *such* transfer or obligation, to [effect a preference to a third person voidable under section 60 of this Act] *enable any creditor of such debtor to obtain a greater percentage of his debt than some other creditor of the same class, and (b) if the transferee or obligee of such transfer or obligation, at the time of such transfer or obligation, knew or believed that the debtor intended to make such use of such consideration.* The remedies of the trustee for the avoidance of such transfer or obligation and of [such] *any ensuing* preference shall be cumulative: *Provided, however*, That the trustee shall be entitled to only one satisfaction with respect thereto.

(4) Every transfer of partnership property and every partnership obligation incurred within one year prior to the filing of a petition [in bankruptcy or of an original petition] *initiating a petition* under [chapter XI or XII of] this Act by or against the partnership, when the partnership is insolvent or will be thereby rendered insolvent, is fraudulent as to partnership creditors existing at the time of such transfer or obligation, without regard to actual intent if made or incurred (a) to a partner, whether with or without a promise by him to pay partnership debts, or (b) to a person not a partner without fair consideration to the partnership as distinguished from consideration to the individual partners.

(5) For the purposes of this subdivision d, a transfer shall be deemed to have been made at the time when it became so far perfected that no bona fide purchaser from the debtor [and no creditor] could thereafter have acquired any rights in the property so transferred superior to the rights of the transferee therein, but, if such transfer is not so perfected prior to the filling of the petition [in bankruptcy or of the original petition] *initiating a proceeding* under [chapter XI or XII of] this Act, it shall be deemed to have been made immediately before the filing of such petition.

(6) A transfer made or an obligation incurred by a debtor adjudged a bankrupt under this Act, which is fraudulent under this subdivision d against creditors of such debtor having claims provable under this Act, shall be null and void against the trustee, except as to a bona fide purchaser, lienor, or obligee for a present fair equivalent value: *Provided, however, That the court may, on due notice, order such transfer or obligation to be preserved for the benefit of the estate and, in such event, the trustee shall succeed to and enforce the rights of such transferee or obligee; And provided further,* That such purchaser, lienor, or obligee, who without actual fraudulent intent has given a consideration less than fair, as defined in this subdivision d, for such transfer, lien, or obligation, may retain the property, lien, or obligation as security for repayment.

SEC. 69d. Upon the filing of a petition under this Act, a receiver or trustee, [not] appointed *in proceedings not* under this Act, of any of the property of a bankrupt, *an assignee for the benefit of creditors of a bankrupt, or an agent authorized to take possession of or to liquidate any of the property of a bankrupt* shall be accountable to the bankruptcy court, in which the proceeding under this Act is pending, for any action taken by him subsequent to the filing of such bankruptcy petition, and shall file in such bankruptcy court a sworn schedule setting forth a summary of the property in his charge and of the liabilities of the estate, both as of the time *of* and since [appointment] *becoming receiver, trustee, assignee, or agent,* and a sworn statement of his administration of the estate. Such receiver [or] trustee, *assignee or agent,* with knowledge of the filing of such bankruptcy proceeding, shall not make any disbursements or take any action in the administration of such property without first obtaining authorization therefor from the bankruptcy court.

SEC. 70a. The trustee of the estate of a bankrupt and his successor or successors, if any, upon his or their appointment and qualification, shall in turn be vested by operation of law with the title of the bankrupt as of the date of the filing of the petition [in bankruptcy or of the original petition proposing an arrangement or plan] *initiating a proceeding* under this Act, except insofar as it is to property which is held to be exempt, to all *of the following kinds of property wherever located* (1) * * *.

All property, wherever located, except insofar as it is property which is held to be exempt, which vests in the bankrupt within six months after bankruptcy by bequest, devise, or inheritance shall vest in the trustee and his successor [and] *or* successors, if any, upon his or their appointment and qualification, as of the date when it vested in the bankrupt, and shall be free and discharged from any transfer made or suffered by the bankrupt after bankruptcy.

All property, *wherever located, except insofar as it is property which is held to be exempt,* in which the bankrupt has at the date of bankruptcy an estate or interest by the entirety and which within six months after bankruptcy becomes transferable in whole or in part solely by the bankrupt shall, to the extent it becomes so transferable, vest in the trustee and his successor [and] *or* successors, if any, upon his or their appointment and qualification, as of the date of bankruptcy.

The title of the trustee shall not be affected by the prior possession of a receiver or other officer of any court.

SEC. 70c. The trustee may have the benefit of all defenses available to the bankrupt as against third persons, including statutes of limitation, statutes of frauds, usury, and other personal defenses; and a waiver of any such defense by the bankrupt after bankruptcy shall not bind the trustee. The trustee, as to all

property (of the bankrupt), whether or not coming into possession or control of the court, *upon which a creditor of the bankrupt could have obtained a lien by legal or equitable proceedings* at the date of bankruptcy, shall be deemed vested as of (the) *such* date (of bankruptcy) with all the rights, remedies and powers of a creditor then holding a lien thereon by (legal or equitable) *such* proceedings, whether or not such a creditor actually exists.

SEC. 70e (2). All property of the debtor affected by any such transfer shall be and remain a part of his assets and estate, discharged and released from such transfer and shall pass to, and every such transfer or obligation shall be avoided by, the trustee for the benefit of the estate: *Provided, however, That the court may on due notice order such transfer or obligation to be preserved for the benefit of the estate and in such event the trustee shall succeed to and may enforce the rights of such transferee or obligee.* The trustee shall reclaim and recover such property or collect its value from and avoid such transfer or obligation against whomever may hold or have received it, except a person as to whom the transfer or obligation specified in paragraph (1) of this subdivision e is valid under applicable Federal or State laws.

[SEC. 70h. Whenever an arrangement or wage-earner plan shall be set aside or discharge revoked, the trustee shall, upon his appointment and qualification, be vested as herein provided with the title to all of the property of the bankrupt as of the date of the final decree setting aside the arrangement or wage-earner plan or revoking the discharge.]

[SEC. 118. The judge may transfer a proceeding under this chapter to a court of bankruptcy in any other district, regardless of the location of the principal assets of the debtor or its principal place of business, if the interests of the parties will be best served by such transfer.]

SEC. 224 (4) distribution shall be made, in accordance with the provisions of the plan, to creditors and stockholders (a) proofs of whose claims or stock have been filed prior to the date fixed by the judge and are allowed, or (b) if not so filed, whose claims or stock have been listed by the trustee or scheduled by the debtor in possession [as fixed claims or stock, liquidated in amount] and *are* not *contingent, unliquidated or* disputed.

SEC. 229. a. A plan shall be deemed to have been substantially consummated if, insofar as applicable, each of the following events has occurred:

"(1) transfer, sale or other disposition of all or substantially all of the property dealt with by the plan pursuant to the provisions of the plan;

"(2) assumption of operation of the business and management of all or substantially all of the property dealt with by the plan by the debtor or by the corporation used for the purpose of carrying out the plan; and

"(3) commencement of the distribution to creditors and stockholders, affected by the plan, of the cash and securities specified in the plan as provided for in section 224 of this Act.

"b. Upon notice to the trustee, the debtor, the Securities and Exchange Commission and such other persons as the judge may designate, the trustee, the debtor in possession, the corporation to which the assets of the debtor are to be transferred under the plan, or any other party in interest may apply to the judge for an order declaring the plan to have been substantially consummated under the provisions of subdivision a of this section.

"c. When a plan has been substantially consummated as defined in subdivision a of this section, or an order has been entered under subdivision b of this section, the plan may not thereafter be altered or modified if the proposed alteration or modification materially and adversely affects the participation provided for any class of creditors or stockholders by the plan."

SEC. 238 (3) only *claims for taxes legally due and owing to the United States or any State or any subdivision thereof at the time of filing of original petition under this Act and* such claims as are provable under Section 63 of this Act shall be allowed[, and claims not already filed may be filed prior to the expiration of three months after the first date set for the first meeting of creditors as provided in section 55 of this act, or, if such date has been previously set, then prior to the expiration of three months after the mailing of notices to creditors of the entry of the order directing that bankruptcy be proceeded with]*; and, as to any such claims not already duly filed, where the petition was filed under section 127 of this Act and an order setting the first date for the first meeting of creditors was made before the filing of such petition, the date of mailing of notice to creditors of the entry of the order directing that bankruptcy be proceeded with shall, for the purposes of subdivision n of section 57 of this Act, be deemed to be the first date set for the first meeting of creditors: Provided, however, That if the time for filing claims in a pending bankruptcy proceeding had expired prior to the filing of a petition under this chapter,*

claims not filed within the time prescribed or as permitted by subdivision n of section 57 of this Act, shall not be allowed in the reinstated bankruptcy proceeding.

SEC. 265a (11) the orders directing [liquidations of estates] *that bankruptcy be proceeded with, or adjudging the debtors bankrupt and directing that bankruptcy be proceeded with* or dismissing proceedings;

SEC. 324. The petition shall be accompanied by—

(1) a statement of the executory contracts of the debtor, [; (2)] *and* the schedules and statement of affairs, if not previously filed[;]: *Provided, however, That if the debtor files with the petition a list of his creditors and their addresses and a summary of his assets and liabilities, the court may, on application by the debtor, grant for cause shown further time, not exceeding ten days, for filing the statement of the executory contracts and the schedules and statement of affairs, and such time shall not further be extended except for cause shown and on such notice and to such persons as the court may direct;* and

[(3)] *(2)* payment to the clerk of the fees, if not already paid, required by this Act.

SEC. 328. The judge may, upon application of the Securities and Exchange Commission or any party in interest, and upon such notice to the debtor, to the Securities and Exchange Commission, and to such other persons as the judge may direct, if he finds that the proceedings should have been brought under chapter X of this Act, enter an order dismissing the proceedings under this chapter, unless, within such time as the judge shall fix the petition be amended to comply with the requirements of chapter X for the filing of a debtor's petition or a creditors' petition under such chapter, be filed. Upon the filing of such amended petition, or of such creditors' petition, and the payment of such additional fees as may be required to comply with section 132 of this Act, such amended petition or creditors' petition shall thereafter, for all purposes of chapter X of this Act, be deemed to have been originally filed under such chapter.

SEC. 337. (2) fix a time within which the debtor shall deposit, in such place as shall be designated by and subject to the order of the court, the consideration, if any, to be distributed to the creditors, the money necessary to pay all debts which have priority, unless such priority creditors shall have waived their claims or such deposit, or consented in writing to any provision of the arrangement for otherwise dealing with such claims, and the money necessary to pay the costs and expenses of the proceedings and the actual and necessary expenses, *in such amount as the court may allow,* incurred *after its appointment by a committee appointed pursuant to section 338 of this Act or incurred before or after the filing of the petition under this chapter* by [the] *a* committee [of creditors and the attorneys or agents of such committee,] *designated in writings filed with the court and signed and acknowledged by a majority in amount of unsecured creditors whose claims have been scheduled otherwise than as contingent, unliquidated or disputed and who would not be disqualified by section 44 of this Act to participate in the appointment of a trustee: Provided, however, That in fixing any such allowances the court shall give consideration only to the services which contributed to the arrangement confirmed or to the refusal of confirmation of an arrangement, or which were beneficial in the administration of the estate, and the proper costs and expenses incidental thereto;* and

SEC. 338. At such meeting the creditors may appoint a committee, if none has previously been *designated or* appointed under this Act, and, if a trustee has not previously been appointed, may nominate a trustee who shall thereafter be appointed by the court in case it shall become necessary to administer the estate in bankruptcy as provided under this chapter.

[SEC. 354. If the time for filing claims in a pending bankruptcy proceeding has expired prior to the filing of a petition under this chapter, claims provable under section 63 of this Act, and not filed within the time prescribed by subdivision n of section 57 of this Act, shall not be allowed in the proceedings or participate in an arrangement under this chapter, and shall not be allowed in the bankruptcy proceeding when reinstated as provided in this chapter.]

SEC. [355] *354.* Upon the entry of an order under the provisions of this chapter directing that bankruptcy be proceeded with, only *claims for taxes legally due and owing to the United States or any subdivision thereof at the time of filing of the original petition under this Act and* such claims as are provable under section 63 of this Act shall be allowed*; and, as to any such claims not already duly filed, where the petition was filed under section 321 of this Act and an order setting the first date for the first meeting of creditors was made before the filing of such petition, the date of mailing of notice to creditors of the entry of the order directing that bankruptcy be proceeded with shall, for the purposes of subdivision n of section 57 of this Act be*

deemed to be the first date set for the first meeting of creditors: Provided, however, That if the time for filing claims in a pending bankruptcy proceeding had expired prior to the filing of a petition under this chapter, claims not filed within the time prescribed or as permitted by subdivision n of section 57 of this Act shall not be allowed in the reinstated bankruptcy proceeding [, and, except as provided in section 354 of this Act, claims not already filed may be filed within three months after the first date set for the first meeting of creditors, held pursuant to section 55 of this Act, or, if such date has previously been set, then within three months after the filing of notice to creditors of the entry of the order directing that bankruptcy be proceeded with].

SEC. 366. The court shall confirm an arrangement if satisfied that—

(1) the provisions of this chapter have been complied with;

(2) it is for the best interests of the creditors *and is feasible;*

[(3) it is fair and equitable and feasible;]

[(4)] (*3*) the debtor has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to the discharge of a bankrupt; and

[(5)] (*4*) the proposal and its acceptance are in good faith and have not been made or procured by any means, promises, or acts forbidden by this Act.

Confirmation of an arrangement shall not be refused solely because the interest of a debtor or, if the debtor is a corporation, the interests of its stockholders or members will be preserved under the arrangement.

SEC. 367 (3) the consideration deposited, if any, shall be distributed and the rights provided by the arrangement shall inure to the creditors affected by the arrangement whose claims [are not barred by the provisions of section 354 of this Act, and] (a) have been [proved] *filed* prior to the date of confirmation and are allowed [,] or (b) whether or not [proved] *filed* [,] have been scheduled by the debtor *and are not contingent, unliquidated, or disputed;* [as fixed liabilities, liquidated in amount, and are not disputed] and

SEC. 369. The court shall in any event retain jurisdiction until the final allowance or disallowance of all debts [,] affected by the arrangement [and not barred by the provisions of section 352 of this Act,] which—

SEC. 371. The confirmation of an arrangement shall discharge a debtor from all his unsecured debts and liabilities provided for by the arrangement, except as provided in the arrangement or the order confirming the arrangement, [including the claims specified in section 354 of this Act,] but excluding such debts as, under section 17 of this Act, are not dischargeable.

SEC. 376. *If the statement of the executory contracts and the schedules and statement of affairs, as provided by paragraph (1) of section 324 of this Act, are not duly filed, or* if an arrangement is withdrawn or abandoned prior to its acceptance, or is not accepted at the meeting of creditors or within such further time as the court may fix, or if the money or other consideration required to be deposited is not filed within the time fixed by the court, or if confirmation of the arrangement is refused, the court shall—

SEC. 381. *Where, after the confirmation of an arrangement, the court shall enter an order directing that bankruptcy be proceeded with—*

"(1) the trustee shall, upon his appointment and qualification, be vested with the title to all the property of the debtor as of the date of the entry of the order directing that bankruptcy be proceeded with;

"(2) the unsecured debts incurred by the debtor after the confirmation of the arrangement and before the date of the entry of the final order directing that bankruptcy be proceeded with shall, unless and except as otherwise provided in the arrangement, share on a parity with the prior unsecured debts of the same classes, provable in the ensuing bankruptcy proceeding, and for such purpose the prior unsecured debts shall be deemed to be reduced to the amounts respectively provided for them in the arrangement or in the order confirming the arrangement, less any payment made thereunder; and

"(3) the provisions of chapters I to VII, inclusive, of this Act, shall, insofar as they are not inconsistent or in conflict with the provisions of this section, apply to the rights, duties, and liabilities of the creditors holding debts incurred by the debtor after the confirmation of the arrangement and before the date of the final order directing that bankruptcy be proceeded with, and of all persons with respect to the property of the debtor, and, for the purposes of such application, the date of bankruptcy shall be taken to be the date of the entry of the order directing that bankruptcy be proceeded with."

SEC. 424. The petition shall be accompanied by—

(1) a statement of the executory contracts of the debtor [; (2)] *and* the schedules and statement of affairs, if not previously filed: *Provided, however, That if*

the debtor files with the petition a list of his creditors and their addresses and a summary of his assets and liabilities, the court may, on application by the debtor, grant for cause shown further time, not exceeding ten days, for filing the statement of the executory contracts and the schedules and statement of affairs, and such time shall not further be extended except for cause shown and on such notice and to such persons as the court may direct; and

[(3)] *(2)* payment to the clerk of the fees, if not already paid, required [to be collected by the clerk under] *by* this Act.

SEC. 459. Upon the entry of an order under the provisions of this chapter directing that bankruptcy be proceeded with, only *claims for taxes legally due and owing to the United States or any State or any subdivision thereof at the time of the filing of the original petition under this Act and* such claims as are provable under section 63 of this Act shall be allowed, and claims not already filed may be filed [within three months after the first date set for the first meeting of creditors, held pursuant to section 55 of this Act] *in accordance with the provisions of subdivision n of section 57 of this Act.*

SEC. 472. The court shall confirm an arrangement if satisfied that—

(1) the provisions of this chapter have been complied with;

(2) it is for the best interests of creditors *and is feasible*;

[(3) it is fair and equitable, and feasible;]

[(4)] *(3)* the debtor has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to the discharge of a bankrupt;

[(5)] *(4)* the proposal and its acceptance are in good faith and have not been made or procured by any means, promises, or acts forbidden by this Act; and

[(6)] *(5)* all payments made or promised by the debtor, by any person issuing securities or acquiring property under the arrangement or by any other person, for services and for costs and expenses in, or in connection with, the proceeding or in connection with and incident to the arrangement, have been fully disclosed to the court and are reasonable, or, if to be fixed after confirmation of the arrangement, will be subject to the approval of the court.

Confirmation of an arrangement shall not be refused solely because the interest of a debtor will be preserved under the arrangement.

SEC. 473 (3) distribution shall be made, in accordance with the provisions of the arrangement, to the creditors, proofs of whose claims have been filed prior to the date fixed by the court and are allowed, or, if not so filed, whose claims have been scheduled by the debtor [as fixed debts, liquidated in amount and not disputed:] *and are not contingent, unliquidated or disputed: Provided, however,* That where such debts are objected to by any party in interest, the objections shall be heard and summarily determined by the court.

SEC. 481. *If the statement of the executory contracts and the schedules and statement of affairs, as provided by paragraph (1) of section 424 of this Act, are not duly filed, or* if an arrangement is withdrawn or abandoned prior to its acceptance and no other arrangement is pending, or if no arrangement is accepted at the meeting of creditors or within such further time as the court may fix, or if the money or other consideration required to be deposited is not deposited or the application for confirmation is not filed within the time fixed by the court, or if confirmation of the arrangement is refused, the court shall—.

SEC. 486. Where after the confirmation of an arrangement, the court shall enter an order directing that bankruptcy be proceeded with—

(1) the trustee shall, upon his appointment and qualification, be vested with the title to all the property of the debtor as of the date of the entry of the order directing that bankruptcy be proceeded with;

(2) the unsecured debts incurred by the debtor after the confirmation of the arrangement and before the date of the entry of the final order directing that bankruptcy be proceeded with shall, unless and except as otherwise provided in the arrangement or in the order confirming the arrangement, share on a parity with the prior unsecured debts of the same classes, provable in the ensuing bankruptcy proceeding, and for such purpose the prior unsecured debts shall be deemed to be reduced to the amounts respectively provided for them in the arrangement or in the order confirming the arrangement, less any payment made thereunder; and

(3) the provisions of chapters I to VII, inclusive, of this Act shall, insofar as they are not inconsistent or in conflict with the provisions of this section, apply to the rights, duties, and liabilities of the creditors holding debts incurred by the debtor after the confirmation of the arrangement and before the date of the final order directing that bankruptcy be proceeded with, and of all persons with respect to the property of the debtor, and, for the purposes of such application, the date

of bankruptcy shall be taken to be the date of the entry of the order directing that bankruptcy be proceeded with.

SEC. 624. The petition shall be accompanied—

(1) by a statement of the executory contracts of the debtor[; (2) by], *and* the schedules and statement of affairs, if not previously filed: *Provided, however, That if the debtor files with the petition a list of his creditors and their addresses and a summary of his assets and liabilities, the court may, on application by the debtor, grant for cause shown further time, not exceeding ten days, for filing the statement of the executory contracts and the schedules and statement of affairs, and such time shall not further be extended except for cause shown and on such notice and to such persons as the court may direct;* and

[(3)] *(2)* where a petition is filed under section 622 of this Act, by payment to the clerk of $15 to be distributed, $10 to the Treasury of the United States for deposit in the referees' salary fund and $5 to the clerk, in lieu of the fees of $17 and $8 as prescribed in sections 40 and 52 of this Act: *Provided, however,* That such fees may be paid in installments, if so authorized by General Order of the Supreme Court of the United States.

[SEC. 643. If the time for filing claims in a pending bankruptcy proceeding has expired prior to the filing of a petition under this chapter, claims provable under section 63 of this Act and not filed within the time prescribed by subdivision n of section 57 of this Act, shall not be allowed in the proceedings or participate in a plan under this chapter, and shall not be allowed in the bankruptcy proceeding when reinstated as provided in this chapter.]

SEC. [644] *643.* Upon the entry of an order under the provisions of this chapter directing that bankruptcy be proceeded with, only *claims for taxes legally due and owing to the United States or any State or any subdivision thereof at the time of the filing of the original petition under this Act and* such claims as are provable under section 63 of this Act shall be allowed[, and, except as provided in section 643 of this Act, claims not already filed may be filed within three months after the first date set for the first meeting of creditors, held pursuant to section 55 of this Act, or, if such date has previously been set, then within three months after the mailing of notice to creditors of the entry of the order directing that bankruptcy be proceeded with.] *; and, as to any such claims not already duly filed, where the petition under this chapter was filed under section 621 of this Act and an order setting the first date for the first meeting of creditors was made before the filing of such petition, the date of mailing of notice to creditors of the entry of the order directing that bankruptcy be proceeded with shall, for the purposes of subdivision n of section 57 of this Act, be deemed to be the first date set for the first meeting of creditors: Provided, however, That if the time for filing claims in a pending bankruptcy proceeding had expired prior to the filing of a petition under this chapter, claims not filed within the time prescribed or as permitted by subdivision n of section 57 of this Act shall not be allowed in the reinstated bankruptcy proceeding.*

SEC. 656 (a) The court shall confirm a plan if satisfied that—

(1) the provisions of this chapter have been complied with;

(2) it is for the best interests of the creditors *and is feasible;*

[(3) it is fair and equitable, and feasible;]

[(4)] *(3)* the debtor has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to the discharge of [a] *the* bankrupt; and

[(5)] *(4)* the proposal and its acceptance are in good faith and have not been made or procured by any means, promises, or acts forbidden by this Act.

Confirmation of a plan shall not be refused solely because the interest of a debtor will be preserved under the plan.

SEC. 660. Upon compliance by the debtor with the provisions of the plan and upon completion of all payments to be made thereunder, the court shall enter an order discharging the debtor from all his debts and liabilities provided for by the plan [and all debts denied participation in the plan by section 643 of this Act,] but excluding *such* debts *as* [which] are not dischargeable under section 17 of this Act held by creditors who have not accepted the plan.

SEC. 661. If at the expiration of three years after the confirmation of a plan the debtor has not completed his payments thereunder, the court may nevertheless, upon the application of the debtor and after hearing upon notice, if satisfied that the failure of the debtor to complete his payments was due to circumstances for which he could not be justly held accountable, enter an order discharging the debtor from all his debts and liabilities provided for by the plan, [and all debts denied participation in the plan by section 643 of this Act,] but excluding *such* debts *as* [which] are not dischargeable under section 17 of this Act held by creditors who have not accepted the plan.

SEC. 666. *If the statement of the executory contracts and the schedules and statement of affairs, as provided by paragraph (1) of section 624 of this Act, are not duly filed, or* if a plan is not proposed at the meeting of creditors or within such further time as the court may fix, or if the plan is withdrawn or abandoned prior to its acceptance, or if the plan is not accepted at the meeting of creditors or within such further time as the court may fix, or if the deposit required under this chapter and under the plan is not made or the application for confirmation is not filed within the time fixed by the court, or if confirmation of the plan is refused, or if after confirmation a debtor defaults in any of the terms of the plan, or if the plan terminates by reason of the happening of a condition specified in the plan, the court shall—.

SEC. 669. Where, after the confirmation of a plan, the court shall enter an order directing that bankruptcy be proceeded with—

(1) the trustee shall, upon his appointment and qualification, be vested with the title to all the property of the debtor as of the date of the entry of the order directing that bankruptcy be proceeded with;

(2) the unsecured debts incurred by the debtor after the confirmation of the plan and before the date of the entry of the final order directing that bankruptcy be proceeded with shall, unless and except as otherwise provided in the plan or in the order confirming the plan, share on a parity with the prior unsecured debts of the same classes, provable in the ensuing bankruptcy proceeding, and for such purpose the prior unsecured debts shall be deemed to be reduced to the amounts respectively provided for them in the plan or in the order confirming the plan, less any payment made thereunder; and

(3) the provisions of chapters I to VII, inclusive, of this Act shall, insofar as they are not inconsistent or in conflict with the provisions of this section, apply to the rights, duties, and liabilities of the creditors holding debts incurred by the debtor after the confirmation of the plan and before the date of the final order directing that bankruptcy be proceeded with, and of all persons with respect to the property of the debtor, and, for the purposes of such application, the date of bankruptcy shall be taken to be the date of the entry of the order directing that bankruptcy be proceeded with.

SEC. 55. (a) All Acts or parts of Acts inconsistent with any provisions of this amendatory Act are hereby repealed.

(b) If any provision of this amendatory Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this amendatory Act which can be given effect without the invalid provision or application, and to this end the provisions of this amendatory Act are declared to be severable.

SEC. 56. EFFECT OF THE AMENDATORY ACT.—(a) Nothing herein contained shall have the effect to release or extinguish any penalty, forfeiture, or liability incurred under any Act or Acts of which this Act is amendatory.

(b) The provisions of this amendatory Act shall govern proceedings so far as practicable and applicable in cases pending when it takes effect; but proceedings in cases then pending to which the provisions of this amendatory Act are not applicable shall be disposed of conformably to the provisions of said Act approved July 1, 1898, and the Acts amendatory thereof and supplementary thereto.

SEC. 57. This amendatory Act shall take effect and be in force on and after three months from the date of its approval.

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